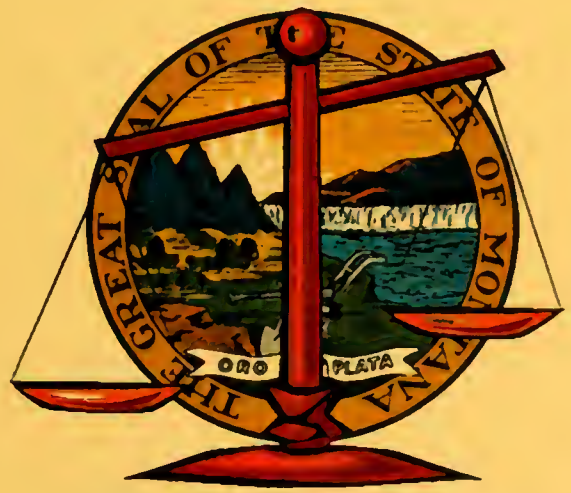
MONTANA PUBLIC DEFENDER COMMISSION

Fiscal Year 2010

Report to the
Governor, Supreme Court
and Legislature



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Montana Public Defender Commission

Fiscal Year 2010 Report to the Governor, Supreme Court and Legislature

December, 2010

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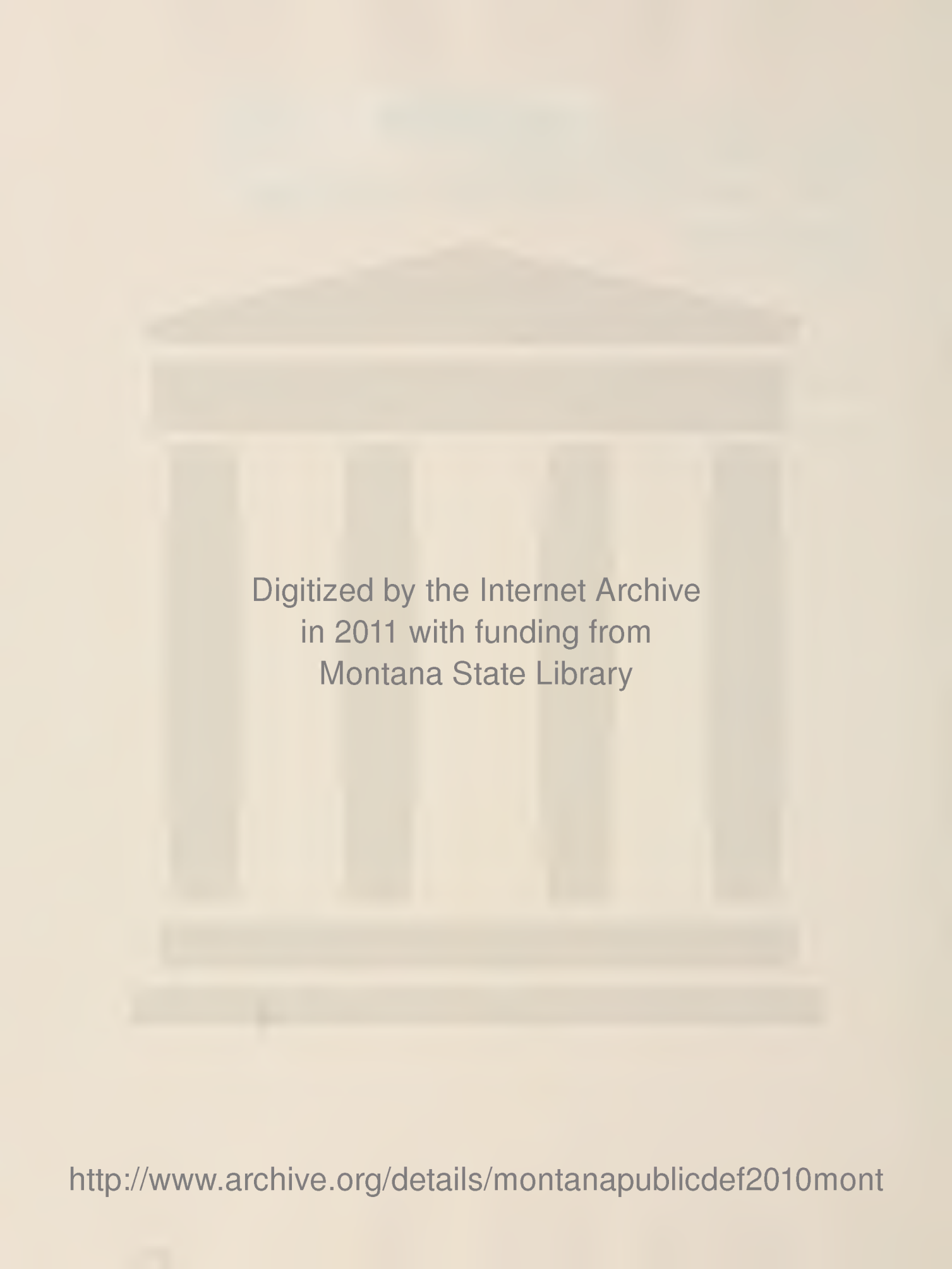
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MONTANA PUBLIC DEFENDER COMMISSION

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STATE OF MONTANA

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December 1, 2010

Governor Brian Schweitzer
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The Montana Supreme Court
P.O. Box 203001
Helena, MT 59620-3001

The Montana Legislature
c/o Kevin Hayes
Legislative Services Division
P.O. Box 201706
Helena, MT 59620-1706

Dear Governor Schweitzer, Supreme Court Justices, and Legislators:

RE: Montana Public Defender Commission Report
to the Governor, Supreme Court and Legislature

Pursuant to 47-1-105 (9), MCA, the Montana Public Defender Commission must provide a biennial report to the Governor, Supreme Court and Legislature. Each interim, the Commission also specifically reports to the Law and Justice Interim Committee.

Description of Report

1. All policies and procedures in effect for the operation and administration of the statewide public defender system and all standards established or being considered by the Commission or the chief public defender.
2. The number of deputy public defenders and the region supervised by each; the number of public defenders employed or contracted within the system, identified

by region; and the number of attorney and non attorney staff supervised by each deputy public defender.

3. The number of new cases in which counsel was assigned to represent a party, identified by region, court and case type; and the total number of persons represented by the office, identified by region, court and case type.
4. The annual caseload and workload of each public defender, identified by region, court and case type.
5. The training programs conducted by the office and the number of attorney and non-attorney staff who attended each program; and the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted within the system.
6. Detailed expenditure data by court and case type.

This report is also available at http://www.publicdefender.mt.gov/2010GovReport/TOC.asp.

Please feel free to contact our Administrative Director, Harry Freebourn, if you have any questions regarding the information in this report. Mr. Freebourn can be reached at 496-6084, or hfreebourn@mt.gov.

Sincerely,

Richard E. Gillespie, Chair

cc: Montana Public Defender Commission
Randi Hood, Chief Public Defender
Harry Freebourn, Administrative Director

Mission

¶1 The primary mission of the statewide public defender system is to provide effective assistance of counsel to indigent persons accused of crime and other persons in civil cases who are entitled by law to the assistance of counsel at public expense. *M.C.A. §47-1-102(1).* This mission, arising out of fundamental principles on which our constitutions of the United States and the State of Montana are founded, was the obligation of the State of Montana long before the enactment of the Montana Public Defender Act in 2005.

¶2 "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." The implementation of this Sixth Amendment right traveled an arduous course before reaching *Gideon v. Wainwright*, 372 U.S. 335, 343-45 (1963), where the United States Supreme Court unanimously held that state courts are required under the Sixth Amendment to provide counsel in felony cases for defendants who are financially unable to retain private attorneys. *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), held that, without a knowing and intelligent waiver, no person may be imprisoned for any offense, whether petty, misdemeanor or felony, unless represented by counsel at trial.

¶3 The Sixth Amendment and the Due Process Clause of the Fourteenth Amendment require that in proceedings for determining delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or counsel will be appointed to represent the child if they cannot afford counsel. *In re Gault*, 387 U.S. 1, 41 (1967). In Montana, minors have the same right to counsel as adults. *Mont. Const. Art. II, §15* (1972).

¶4 It is sufficient here to say that the right to counsel attaches at the "critical stages" of the criminal justice process. *Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 212[FN16] (2008), noted that "critical stages" are defined as "... proceedings between an individual and agents of the State (whether 'formal or informal, in court or out,' see *United States v. Wade,* 388 U.S. 218, 226, ... (1967)) that amount to 'trial-like confrontations,' at which counsel would help the accused 'in coping with legal problems or ... meeting his adversary,' *United States v. Ash,* 413 U.S. 300, 312-313 (1973) ...."[1] As footnoted, a critical stage may happen earlier in a case but without doubt a defendant's initial appearance before a judicial officer is a critical stage that triggers the Sixth Amendment right to counsel. *Rothgery*, 554 U.S. at 213.

¶5 A defendant is guaranteed the right to assistance of counsel in criminal cases by our *Mont. Const. Art. II, §17* and *§24* (1972). *State v. Rardon*, 305 Mont. 78, 78-79 (2001); *State v.*

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[1]Other critical stages where the right to counsel attaches include post-arrest interrogation, *Brewer v. Williams*, 430 U.S. 387, 399-401 (1977); *Miranda v. Arizona*, 384 U.S. 436, 479-81 (1966); line-ups, *United States v. Wade*, 388 U.S. 218, 236-37 (1967); other identification procedures, *e.g.*, one person "showup," *Moore v. Illinois*, 434 U.S. 220, 231-32 (1977); initial appearance, *Michigan v. Jackson*, 475 U.S. 625, 629[FN3] (1986); arraignments, *Hamilton v. Alabama*, 368 U.S. 52, 53 (1961); preliminary hearing, *Coleman v. Alabama*, 399 U.S. 1, 9-10 (1970); plea negotiations, *Brady v. United States*, 397 U.S. 742, 748 (1970) and *McMann v. Richardson*, 397 U.S. 759, 769-70 (1970); and direct appeals, *Douglas v. California*, 372 U.S. 353, 356-57 (1963).

Colt, 255 Mont. 399, 403 (1992), citing *State v. Enright*, 233 Mont. 225, 228 (1988). Due process guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and *Art. II, §17*, of the Montana Constitution requires the assistance of counsel in situations other than criminal cases where "fundamental liberty interests" are at stake. The Montana Supreme Court has cited U.S. Supreme Court cases in discussions about fundamental fairness calling for the assistance of an attorney so the individual can meaningfully participate and the procedure is fundamentally fair.[2]

¶6 Situations in which the right to the assistance of an attorney was deemed essential to fundamental fairness were codified before the statewide public defender system was created. Those situations are now catalogued in *M.C.A. §47-1-104(4)(b)*.

¶7 Reasonably effective assistance is the standard for performance any time counsel appears on behalf of an accused, *i.e.*, the representation must come within an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984).[3] Montana follows

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[2]For examples, see *In re A.F.-C.*, 307 Mont. 358, 368-70 (2001), citing *Lassiter v. Department of Social Services*, 452 U.S. 18, 24-25 & 32-33 (1981); *In re A.R.A.*, 277 Mont. 66, 70-71 (1996), citing *Stanley v. Illinois*, 405 U.S. 645, 651-52 (1972); *In re A.S.A.*, 258 Mont. 194, 198 (1993), and *Matter of R.B.*, 217 Mont. 99, 102-03 (1985), citing *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982) (a natural parent's right to the care and custody of his or her child is a "fundamental liberty interest" that must be protected by fundamentally fair procedures). Also see Professor Mary Helen McNeal's law review article, *Toward a "Civil Gideon" under the Montana Constitution: Parental Rights as the Starting Point*, 66 Mont. L. Rev. 81 (Winter 2005), for an extensive examination of *Mont. Const. Art. II, §16* (administration of justice), *Art. II, §4* (dignity and equal protection), *Art. II, §17* (due process), and *Art. II, §34* (unenumerated rights) clauses as cornerstones for the development of a "civil Gideon" in Montana.

[3]*Strickland*, 466 U.S. at 688-89: "... Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. See *Cuyler v. Sullivan*, *supra.*, 446 U.S. [335] at 346, 90 S.Ct. at 1717 [(1980)]. From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. See *Powell v. Alabama*, 287 U.S. [45] at 68-69, 53 S.Ct. at 63-64 [(1932)].

"These basic duties neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance. In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Prevailing norms of practice as reflected in American Bar Association standards and the like, *e.g.*, ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980) ("The Defense Function"), are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions. (*Citation omitted*). Indeed, the existence of detailed guidelines for representation could distract counsel from the overriding mission of vigorous

the *Strickland* objective standard of reasonableness when evaluating ineffective assistance claims in criminal cases. *Whitlow v. State*, 343 Mont. 90, 93-94 (2008). For the "civil cases" listed in *M.C.A. §47-1-104(4)*, standards used to evaluate claims of legal malpractice and the *Strickland* test simply do not go far enough to protect the liberty interests of individuals who may or may not have broken any law but who may indefinitely bear a social stigma. *In re A.S.*, 320 Mont. 268, 273-75 (2004), quoting from *In re Mental Health of K.G.F.*, 306 Mont. 1, 7, ¶33 (2001).

¶8 Providing effective assistance of counsel at critical stages in the types of cases delineated in *M.C.A. §47-1-104(4)* has not been optional or negotiable for a long time. The enactment of the Montana Public Defender Act in 2005 consolidated the delivery of the assistance of counsel in those cases through the statewide public defender system rather than through a hodgepodge of programs.

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advocacy of the defendant's cause. ..."

Assessments and Payment of Costs for Assigned Public Defenders

¶1 Included is the accounting report for the collection of the costs of representation assessed by courts on convicted criminal defendants as a part of or a condition under a sentence imposed. Segregating Senate Bill 263 (2009), by fiscal year, the report details the number of people upon whom the courts assessed a payment of costs, the total amounts assessed in a fiscal year, the amounts collected by year, the number of people who paid in full their accounts receivable during a year, the number of people who had accounts receivable open at the end of a year, and the accounts receivable balances owed at the end of a year.

¶2 Before the statewide public defender system went into effect on July 1, 2006, a court could impose the cost of reasonable compensation and costs incurred by the court-appointed counsel in the proceeding as part of or as a condition under the sentence. *M.C.A. §46-8-113(1)* and *(2)* (2005). These subsections were amended to provide that the costs assessed would be limited to those incurred by the office of state public defender [OPD] after the statewide system began operations. *Id.* The Montana Public Defender Act of 2005 established a public defender account in the state special revenue fund which can receive deposits from several sources including "payments for the cost of a public defender ordered by the court pursuant to *46-8-113* as part of a sentence in a criminal case." *M.C.A. §47-1-110.* Before the system went into effect, payments were made to the clerks of the district courts who, in turn, forwarded the payments to the department of revenue for deposit into the general fund. *M.C.A. §46-8-114* (2005). Since the system went into effect most of the payments come directly from the clients, although some payments are collected by clerks of court and are forwarded to OPD, for deposit into the special revenue account. That money can be used only for the operation of the statewide public defender system. *M.C.A. §47-1-110.*

¶3 OPD does not decide who will be assessed to pay for the cost of representation. Nor does OPD determine how much the person should pay. The courts are tasked to do both. *M.C.A. §46-8-113.*

¶4 Senate Bill 263 (2009) amended *M.C.A. §46-8-113(1)* to require the courts to make a cost assessment of $150 for misdemeanors and $500 for felonies as a part of or a condition under a sentence of a convicted defendant who was represented by a public defender. However, there are exceptions to mandatory assessments of $150 or $500 on every person convicted or who pleads guilty.

¶5 First, the cost must be limited to the cost incurred by OPD for providing the defendant with counsel. *M.C.A. §46-8-113(2).* For example, a court of limited jurisdiction assessed less than $20 on a defendant represented by a public defender. A county attorney who did not prosecute the case concluded that either the public defender was not candid with the court or the assistance could not have been effective when the public defender reported to the court that only about 15 minutes was spent on the

representation. An investigation revealed these facts:

1. The misdemeanor charge alleged the issuing of a bad check;

2. Upon being advised he could be facing up to a $500 fine and up to 6 months in jail, the defendant wanted to see an attorney he could not afford;

3. The new client appeared for his meeting with the assigned public defender;

4. The client simply wanted to know what he might really be facing;

5. The attorney answered his questions in a matter of minutes;

6. At that meeting the client said he wanted to plead guilty; and

7. Later, the client, standing with the public defender, entered a plea of guilty and was sentenced in short order.

8. The public defender reported the 2 tenths of an hour he spent in the office with the client and the few minutes in court as about 15 minutes.

The attorney could have been held in contempt if more or less time than that spent had been reported. Fraud would have been committed on the defendant if the time spent on the case had been inflated or the public defender had recommended the statutory $150 be assessed. $150 for 15 minutes equals $600 an hour, an exorbitant rate by any measure, and many times in excess of the *M.C.A. §46-8-113(2)* prohibition against assessing costs greater than those incurred by OPD.

¶6 Second, imposition of $150 in every misdemeanor case and $500 in every felony case, regardless of the time counsel spent or consideration of the defendant's ability to pay, takes on unconstitutional "elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law." *State v. Ellis*, 339 Mont. 14, 18, ¶14, quoting from *James v. Strange,* 407 U.S. 128, 142 (1972). Provisions similar to those in *M.C.A. §46-8-113(3)* and *(4)* are permissible under constitutional principles of equal protection and the availability of legal counsel. *State v. Farrell*, 207 Mont. 483, 492 (1984), citing *Fuller v. Oregon*, 417 U.S. 40 (1974). *Ellis*, 339 Mont. at 18-19, ¶¶16-17, affirms the constitutionality of *M.C.A. §46-8-113(3)* and *(4)*.

¶7 Third, courts can impose payment of the cost of representation only on those who can or will be able to pay and then only in an amount the person can pay. But for substituting "assigned counsel" for "court-appointed counsel," *M.C.A. §46-8-113(3)* is the same as it read before the statewide public defender system existed:

> (3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and

the nature of the burden that payment of costs will impose.

¶8 A court cannot reserve for itself the right to change the sentence or add conditions at a later time and, absent statutory authority, lacks the jurisdiction to modify the sentence later. *State v. Hirt*, 329 Mont. 267, 271, ¶¶19-20 (2005). Before sentencing a defendant to pay for the cost of representation, the court must conduct a mandatory *M.C.A. §46-8-113(3)* inquiry into the ability of the defendant to pay and, upon consideration of the available evidence, make a determination of the extent to which the defendant is or will be able to pay. *Hirt*, 329 Mont. at 271, ¶20. A full-fledged adversarial inquiry is not required but any defenses to payment asserted by the defendant should be fully considered. *Farrell*, 207 Mont. at 492, quoting from *United States v. Bracewell*, 569 F.2d 1194, 1200 (2nd Cir. 1978). An order for the payment of the cost of representation cannot stand without a meaningful inquiry into the defendant's financial status and a finding on the record that there are sufficient resources to repay the cost. *Hirt*, 329 Mont. at 271, ¶22, citing *Farrell*. A sentence is illegal if the court does not make an affirmative finding that the defendant can afford to pay the amount ordered. *State v. Starr*, 339 Mont. 208, 210, ¶10 (2007).

¶9 The courts may order payment of the OPD cost assessed "... to be made within a specified period of time or in specified installments." *M.C.A. §46-8-114*. When a court defers imposition of a sentence or suspends all or a portion of execution of the sentence the judge may impose the payment of the cost of a public defender as a condition during the deferred imposition or suspension of the sentence. *M.C.A. §46-18-201(4)(g)*. In most instances a sentence can be deferred for a period not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony. *M.C.A. §46-18-201(1)(a)(i)*. However the period of deferment can be doubled if a financial obligation is imposed as a condition of the sentence. *M.C.A. §46-18-201(1)(a)(ii)*.

¶10 Courts can impose other financial obligations on indigent defendants beside paying the cost of representation. *M.C.A. §46-18-201(4)(d)*, *(e)*, and *(f)* allow the sentencing judge to impose conditions for the payment of the costs of confinement, payment of a fine as provided in *§46-18-231*, and payment of costs as provided in *§46-18-232* and *§46-18-233*. *M.C.A. §46-18-232(1)* costs include the costs of jury service, the costs of prosecution, and the costs of pretrial, probation, or community service supervision in misdemeanor or felony cases. These costs must be limited to expenses specifically incurred by the prosecution or other agency in connection with the proceedings against the defendant, or $100 per felony case or $50 per misdemeanor case, whichever is greater. Like *M.C.A. §46-8-113* costs, a court may not sentence a defendant to pay a fine or costs unless it is determined the person is or will be able to pay. *M.C.A. §46-18-231(3)* and *§46-18-232(2)*.

¶11 All courts of original jurisdiction must impose upon conviction or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or

fines of (a) $15 for each misdemeanor charge; (b) the greater of $20 or 10% of the fine levied for each felony charge; and (c) an additional $50 for each misdemeanor and felony charge under title 45, *§61-8-401*, or *§61-8-406*. *M.C.A. §46-18-236(1)*. The $15 and $20 (or 10%) charges collected are earmarked for paying the salaries of deputy county attorneys, other salaries in the office of the county attorney, or the salaries of city and town attorneys and deputies. *M.C.A. §46-18-236(6)*. The court is required to waive payment of the *§46-18-236(1)* charges if it determines under *M.C.A. §46-18-231(3)* and *§46-18-232(2)* that the person is not able to pay the fine and costs or make payment within a reasonable time. *M.C.A. §46-18-236(2)*.

¶12 In addition, regardless of whether any part of the sentence is deferred or suspended, the sentence must require payment of full restitution to the victim if the sentencing judge finds that a victim has sustained a pecuniary loss. *M.C.A. §46-18-201(5)*. The costs of supervising the payment of restitution are imposed at a rate of 10% of the restitution ordered, but not less than $5. *M.C.A. §46-18-241(2)*. If the person ordered to pay restitution is not able to pay any restitution due to circumstances beyond his or her control the court may order the performance of community service for which the person must be given credit. *M.C.A. §46-18-241(3)*.

¶13 Priorities have been set for the allocation of payments of restitution, charges, costs, and fines in *M.C.A. §46-18-251(2)*:

> (2) Except as otherwise provided in *46-18-236(7)(b)* and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of *46-18-236*, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:
>
> (a) payment of charges imposed pursuant to *46-18-236*;
>
> (b) payment of supervisory fees imposed pursuant to *46-23-1031*;
>
> (c) payment of costs imposed pursuant to *46-18-232* or *46-18-233*;
>
> (d) payment of fines imposed pursuant to *46-18-231* or *46-18-233*; and
>
> (e) any other payments ordered by the court.

State v. Brown, 354 Mont. 329, 333, ¶14 (2009), holds that payments earmarked for the cost of representation must be transmitted to OPD for deposit into the special revenue fund and cannot be allocated according to the priorities set in *M.C.A. §46-8-251(2)*.

¶14 A defendant may return to court and ask for remission of any remaining unpaid OPD cost assessed at sentencing. *M.C.A. §46-8-113(4)*, is the same as it was

before 2005:

> (4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

¶15 *M.C.A. §46-18-232(3)* is an identical provision for a defendant to seek remission for the payment of *§46-18-232(1)* costs. There is not a similar provision for the payment of fines although the court is supposed to determine at sentencing whether the defendant can or will be able to pay a fine, *M.C.A. §46-18-231(3)*; and *M.C.A. §46-18-233(2)* prohibits the revocation of a deferred or suspended sentence upon default if the default is not attributable to an intentional refusal to obey the court's order or a failure to make a good faith effort to make the payment. The payment of restitution may be modified or waived. *M.C.A. §46-18-246.*

¶16 *M.C.A. §46-8-115* provides for penalties that can be imposed by the sentencing court if a person ordered to pay the cost of representation is in default. This statute appears to be modeled after the recoupment statute approved in *Fuller v. Oregon* by the United States Supreme Court. *State v. Lenihan*, 184 Mont. 338, 344-45 (1979). A person in default on the payment of the cost of representation ordered can be brought into court by the prosecutor or the court on a show cause citation or an arrest warrant to show why the default should not be treated as a contempt of court. *M.C.A. §46-8-115(1).* The court may modify the terms of payment or revoke the payment of any unpaid portion in whole or in part if the court determines the default is not contempt. *M.C.A. §46-8-115(4).* Conversely, *M.C.A. §46-8-115(2)* permits the court to find the default constitutes civil contempt if the accused fails to show a good faith effort to make the payment or that the default was not attributable to an intentional refusal to obey the court's order to pay the cost. *M.C.A. §46-8-115(3)* sets the imprisonment penalty for a finding of contempt:

> (3) The term of imprisonment for contempt for nonpayment of the costs of assigned counsel must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

¶17 Further, *M.C.A. §46-8-115(5)* establishes the procedure for the collection of payments on which there has been a default:

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

¶18 *Brown*, 354 Mont. at 333, ¶13, mentions that OPD, if required, is not prevented from advising the court or the prosecution about the status of payments. However, a financially eligible person cited to show cause should be entitled to representation by a public defender since there is a potential for incarceration upon a finding the person is in civil contempt for not paying the cost of representation by a public defender in an earlier proceeding. It would be awkward at best, and an impermissible ethical conflict of interest at worst, for a public defender to represent a person in a contempt proceeding initiated by a report from OPD. On the other hand, it is permissible for the district court to order payments for the cost of representation be made to the clerk of court rather than directly to OPD. *Brown*, 354 Mont. at 333, ¶14. Presumably, courts of limited jurisdiction are permitted to order the same. At ¶13, *Brown* notes that probation officers can monitor payments. Ethical concerns are dampened by having the prosecutor or the court initiate a contempt proceeding on information from a source other than OPD. Such a procedure fits with more traditional roles, particularly when there is a likelihood of outstanding balances on other charges, costs, fines or restitution.

¶19 A role of the public defender at a sentencing stage or during a contempt proceeding is to develop any defenses the defendant may have to payment of restitution, fines, and the assessment of costs, including the cost of representation, and present those defenses at the hearing. Those issues are thereby preserved for appeal if there is something illegal about an order for payment.

¶20 The failure of a public defender in fulfilling this role raises the issue of ineffective assistance of counsel because there would be no record on which a reviewing court could determine there was a meritorious defense. Further, an appellate court generally will not review sentencing issues on appeal that were not raised in the lower court by an objection. *State v. Kotwicki*, 335 Mont. 344, 347, ¶8 (2007). *Lenihan*, 184 Mont. at 343, provides an exception to the general rule but only allows appellate review of a sentence that is alleged to be illegal or in excess of statutory mandates. *Kotwicki*, 335 Mont. at 347, ¶8. A sparingly used common law plain error review might be available but that review is discretionarily determined on the basis of the particular facts and circumstances of each case compelling a finding that (a) not reviewing the claimed error may result in a manifest miscarriage of justice, (b) may leave unsettled the question of the fundamental fairness of the trial or proceedings, or (c) may compromise the integrity of the judicial process. *State v. Upshaw*, 335 Mont. 162, 165, ¶12 (2006).

¶21 Absent an appellate review, the defendant could return to the sentencing court for a change in the amount of the payments ordered on the basis of manifest hardship. *M.C.A. §46-8-113(4)*; *§46-18-232(2)*; *§46-18-246*. Even later the defendant could argue a good faith effort to pay the cost of representation was made or that the default was not attributable to an intentional refusal to obey the court's order at a *M.C.A. §46-8-115* civil contempt hearing. Obviously, it is important for public defenders to advocate the defenses against sentences ordering the payment of the cost of representation so lawful assessments are entered and burdensome, unnecessary, costly, time consuming appeals and post-sentence hearings are reduced, if not avoided.

¶22 Within the foregoing framework of statutes and case law the sentencing judges of the 56 district courts in 22 judicial districts and the 152 courts of limited jurisdiction have determined at sentencing pursuant to *M.C.A. §46-8-113(3)* that the vast majority of the people represented by public defenders cannot or will not be able to pay the cost of representation. Since the inception of the statewide system more than 100,000 clients have been represented by the end of fiscal year 2010 and the courts have imposed the payment of some amount of the cost on 1604 defendants in criminal cases. The report accounting for the payment of costs demonstrates that amounts assessed have grown from $34,515 on 67 clients for fiscal year 2007, to $114,566 on 265 clients in 2008, to $205,571 on 448 clients in 2009, to $263,377 on 824 clients in 2010. Defendants have paid a total of $136,090 over four fiscal years, of which $60,674 was paid in fiscal year 2010.

¶23 There are impediments to recouping more costs. The *Brown* Court applied the rule of statutory construction in ¶12 that a particular statutory provision is paramount to a general provision so a particular intent will control over a general one that is inconsistent. However, the decision does not specifically hold that any payments are applied first to the cost of representation before allocating any balance among the items listed in *M.C.A. §46-18-251(2)*. *Brown* also left unclear who determines whether a payment is for the cost of representation or is a payment for distribution among the *M.C.A. §46-8-251(2)* items if the sentencing order does not. Although not necessarily universal, the trend seems to be that people are instructed to pay the *M.C.A. §46-8-251(2)* items assessed before any payments are sent to OPD for reimbursement of the cost of representation. Legislation setting a higher priority for allocating payments for the cost of representation will be necessary before there can be a pragmatic expectation of a greater recovery of those costs.

¶24 While greater assessments are being ordered on more defendants and more of them are paying more each year, more people (1,433) owed more ($481,939) at the end of 2010 than at any other time. This trend is consistent with the situation in other public defender programs. This year the Brennan Center for Justice at the New York University School of Law published a study entitled "Criminal Justice Debt: A Barrier to Reentry" that can be accessed at http: brennan.3cdn.net/e61080249 5d901dac3_76m6vqhpy.pdf.

Charges used by fifteen states other than Montana were studied and conclusions were drawn about the consequences of imposing those charges on the indigent as well as the negative impact the efforts at collecting those charges have on the justice system as a whole including the courts, court staff, law enforcement, prisons and jails. Plenty can be found in the report to distinguish the situation in Montana from the findings in the report. However, careful study and consideration must be given to whether the same negative consequences the report found will emerge in Montana before more emphasis is put on charging indigent defendants for the cost of their representation and collection efforts are ramped up.

Office of the State Public Defender
Judgments,Assessments and
Collections of Legal Fees
FYE 10

	FY 2007	FY 2008	FY 2009	FY 2010
JUDGMENTS PRE SB 263 AND OPD ASSESSMENTS				
Balance of A/R @ Beg of Year	$ -	$ 26,497	$ 106,244	$ 279,236
Assessments by Year	34,515	114,566	205,571	35,306
Total Collections by Year	(8,018)	(34,818)	(32,580)	(26,501)
# of Clients represented by Collections Total	20	81	230	212
Total Balance of A/R @ End of Year **	$ 26,497	$ 106,244	$ 279,236	$ 288,041
Total # of Clients with open A/R @ Beg of Year	-	61	291	679
# of Clients Assessments by Year	67	265	448	13
Total # of Clients paid in full during fiscal year	(6)	(35)	(60)	(30)
Total # of Clients with open A/R @ End of Year	61	291	679	662
SENATE BILL 263				
Balance of A/R @ Beg of Year	$ -	$ -	$ -	$ -
Assessments by Year	-	-	-	228,071
Total Collections by Year	-	-	-	(34,174)
# of Clients represented by Collections Total	-	-	-	254
Total Balance of A/R @ End of Year **	$ -	$ -	$ -	$ 193,898
Total # of Clients with open A/R @ Beg of Year	-	-	-	-
# of Clients Assessments by Year	-	-	-	811
Total # of Clients paid in full during fiscal year	-	-	-	(40)
Total # of Clients with open A/R @ End of Year	-	-	-	771
TOTAL ALL JUDGMENTS AND ASSESSMENTS INCLUDING SENATE BILL 263				
Balance of A/R @ Beg of Year	$ -	$ 26,497	$ 106,244	$ 279,236
Assessments by Year	34,515	114,566	205,571	263,377
Total Collections by Year **	(8,018)	(34,818)	(32,580)	(60,674)
# of Clients represented by Collections Total	20	81	230	466
Total Balance of A/R for Reporting Year **	$ 26,497	$ 106,244	$ 279,236	$ 481,939
Total # of Clients with open A/R @ Beg of Year	-	61	291	679
# of Clients Assessments by Year	67	265	448	824
Total # of Clients paid in full during fiscal year	(6)	(35)	(60)	(70)
Total # of Clients with open A/R @ End of Year	61	291	679	1,433
** Financial Statement Reporting as follows	$ -	$ 66,637	$ 213,181	$ 481,939

There exists a variance between A/R Reported here, and A/R reported on Financial Statements. This is created out of a time lag between dated court orders and signature of those orders, and a secondary lag for that information to make its way to the OPD Central Office for reporting here.

OFFICE OF THE STATE PUBLIC DEFENDER

Calculations and Assumptions to Determine the Hourly Cost per FTE and Contract Attorney

This paper provides the calculations and underlying assumptions behind the agency study that produced a cost per hour for an FTE attorney and for a contract attorney. The costs included in this study are from the agency's audited financial statements for FY 2010.

The results of the study are as follows: the cost for an FTE (staff attorney) in FY 2010 was $68 per hour and the cost for a contract attorney was $95 per hour.

Here are the calculations and assumptions included in the study:

1. The cost information came from the agency's FY 2010 audited financial statements. The agency expended $20,392,572 during FY 2010.

2. The average cost per FTE attorney with benefits and insurance is about $35 per hour.

3. Contract attorneys are paid $60 per hour. They are also reimbursed for certain other costs including travel, lodging, etc. which are an insignificant part of the total cost.

4. During FY 2010 the agency recorded the receipt of 27.660 new cases. Of these, 21,017 or 76% were assigned to FTE attorneys and 6,643 or 24% were assigned to contract attorneys. This 76/24% split was used to allocate most of the cost types between FTE and contract attorneys.

5. Total payments to contract attorneys during FY 2010 were $4.949,966 or 24% of the total expended. This is a direct cost related only to the efforts of contract attorneys.

6. Total payments during FY 2010 for expert witnesses, mental health evaluations, and other outside services provided for client defense totaled $759,966 or 4% of the total cost. This cost was allocated to FTE/contract attorneys on a 76/24% basis as both FTE and contractors use outside services in client defense.

7. The total amount expended during FY 2010 to provide central services to the agency was $1,861,703 or 9% of the total cost. Much of this cost was allocated to FTE/contract attorneys on a 76/24% basis. The cost related to the agency's human resources department was only allocated to the FTE attorney area and the costs associated with contract management were allocated 100% to the contract attorney area.

8. The remaining $12,820,937 or 63% of expenditures was for regional public defender operations, the major crimes unit, and for the appellate program. This cost was allocated as per assumption 12 noted below. These operations use both FTE attorneys and contract attorneys to provide services to clients.

9. During FY 2010 it is assumed that contract attorneys billed the agency about 82,499 hours. This calculation was based on the total cost of $4.949.966 paid directly to contract attorneys divided by the rate of $60 per hour. This number was used to derive the contractor cost per hour in assumption 18.

10. Non-managerial FTE attorneys are assumed to be paid for 2080 hours during the fiscal year, during which they are assumed to work on cases at least 80% of the time or 1664 hours. This calculation

was necessary to develop the number that would be used to calculate the FTE attorney cost per hour in assumption 17.

11. Management FTE attorneys are assumed to be paid for 2080 hours during the fiscal year, during which they are assumed to work on cases or other tasks for 80% of the time or 1664 hours. Furthermore, their case work is limited to either 33% or 75% of that time, or between 549 and 1240 hours. This area will be explained in more detail below.

12. Regional and appellate costs are allocated between FTE and contract attorneys for their respective areas using an 85% FTE and 15% contract attorney allocation for large and medium regions and the appellate office, and a 60% FTE and 40% contract attorney allocation for the small regions (a region's size is based on its caseload). This distribution represents the fact that these functions provide management and oversight of both FTE and contact attorneys serving clients in their respective areas. For example, the Kalispell region's costs, excluding those paid to contract attorneys and to other contractors, total $1,804,392. Offices in Polson and Kalispell include both public defender and regional operations. Regional personnel manage all FTE and contract public defender activities in the Kalispell region (comprised of all of the courts and clients in Flathead, Lake, Lincoln, and Sanders counties). Of the $1,804,392 noted above, $270,659 or 15% is allocated to the oversight and management of the contract attorneys that provide services to the agency while the remaining cost remains with the FTE attorneys.

13. The total FTE attorney counts were taken from the agency's FY 2010 staffing report by region. That report reflected 116.75 FTE attorneys.

14. FTE attorneys providing central office functions were assumed to work cases 33% of the time during FY 2010 (adjusted by the 80% rule noted in assumption 11 above).

15. FTE attorneys providing regional or program management were assumed to work cases 75% of the time during FY 2010 (adjusted by the 80% rule noted in assumption 11 above).

16. Hours worked by an FTE attorney over the 2080 hours were not included in this study. If excess hours were included, the cost per hour would be reduced from the current hourly rate. However, hours *not* worked by an FTE aside from the allowances noted above were also excluded. The study assumes that any overages or shortages offset each other.

17. Hourly cost per FTE attorney – using the assumptions noted above the $68 per hour rate was derived as follows:
    a. The total cost allocated to FTE attorneys was $12,525,446.
    b. The total number of FTE attorneys was 116.75 and this was reduced to 110.24 based on assumptions 11, 14 and 15.
    c. The total cost of FTE attorneys is $12,525,446, divided by 110.24 or an average of $113,620 per attorney.
    d. The hourly cost is $113,620 divided by 1664 hours (see assumption 10) or $68 per hour.

18. Hourly cost per contract attorney – using the assumptions noted above the $95 per hour rate was derived as follows:
    a. The total cost allocated to contract attorneys was $7,867,126.
    b. The total hours billed based on assumption 9 above was 82,499.
    c. The hourly cost is $7,867,126 divided by 82,499 hours or $95 per hour.

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Office of the State Public Defender
Administrative Policies

Subject: **Determination of Indigence**	Policy No.: **105**
Title **47**	Pages: **7**
Section: **1-111**	Last Review Date: **6-15-10**
Effective Date: **7-1-06**	Revision Date: **6-15-10**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) will provide public defender services to applicants that qualify under 47-1-111, MCA.

1.2 When a court orders OPD to assign counsel, the office shall immediately assign counsel prior to a determination of indigence.

2.0 PREPARATION AND DELIVERY OF INDIGENCE FORM

2.1 All district and limited courts will send appointment forms to Regional Public Defender Offices. The appointment form is provided by the Central Office, and provides information about the applicant for public defender services.

2.2 The Central Office shall provide the Regional Public Defender Offices with indigence questionnaire (IQ) forms as prepared by OPD and approved by the Montana Public Defender Commission.

2.3 Regional Deputy Public Defenders or their staff will deliver forms to all jails and courthouses and any other venue deemed appropriate.

2.4 An applicant for public defender services will be assigned provisional counsel prior to the determination of the applicant's indigence.

2.5 An applicant for public defender services must complete the IQ form, sign it, and return it to the Regional Public Defender Office within ten days of appointment. The office will move to rescind the appointment if the required materials are not provided.

2.5.1 An applicant may be required to provide documentation of income, including pay stubs and/or tax returns.

2.6 An Indigence Determination Specialist (IDS) will aid any applicant requesting assistance. Information on the IQ form is confidential.

2.6.1 Each Regional Deputy Public Defender will appoint a support staff person as IDS for the region, and a designated staff backup if appropriate. The Central Office will maintain a list identifying the IDS and backup IDS for each region.

2.6.2 The Regional Deputy Public Defender will not act as the IDS.

3.0 DETERMINATION OF INDIGENCE

3.1 The IDS will review the IQ form, fill in any missing information, and assure that the IQ form is signed by the applicant.

3.2 The IDS will determine eligibility for services based on:

3.2.1 Gross household income falls within the Gross Income Guidelines (Attachment A), which are based on the federal poverty level; or

3.2.2 Retaining private counsel would result in substantial hardship to the applicant or his/her household. Both disposable income (gross household income less expenses) and assets will be reviewed when qualifying an applicant under this section. The crime charged shall also be a factor considered in the determination.

3.3 If the IDS has a question regarding an applicant's eligibility for public defender services, the Regional Deputy Public Defender will make a ruling.

4.0 ELIGIBILITY VERIFICATION

4.1 The IDS will verify income and assets for all applicants seeking qualification under 3.2.2. Verification may include requiring pay stubs and/or tax returns and doing a property records search.

4.2 The IDS will verify income and assets for every tenth applicant seeking qualification under 3.2.1.

4.3 New or additional information regarding an applicant's income or assets may result in a redetermination of eligibility.

5.0 QUALIFIED APPLICANTS

5.1 If the applicant is eligible for public defender services, a written notice of approval shall be sent to the applicant and the appropriate public defender office or contract attorney.

5.2 The court will be advised that the person has qualified for public defender representation.

6.0 DISQUALIFIED APPLICANTS

6.1 If the applicant does not qualify for public defender services, a written notice of disqualification and notice of the right to have the court review the finding will be sent to the applicant.

6.2 The Regional Deputy Public Defender shall immediately notify the court of record when it is determined that an applicant does not qualify for public defender services (refer to Attachment B, Standard Letter of Notification of Denial, and Attachment C, Motion to Rescind Appointment).

6.3 The judge must rescind the appointment of counsel when notified that an applicant does not qualify for public defender services.

6.4 A judge may overrule a determination that an applicant is not eligible for public defender services. If overruled, OPD will provide public defender services to the applicant.

7.0 RECOVERY OF ATTORNEY FEES BY OPD

7.1 If an applicant is found guilty by plea or trial, the Regional Deputy Public Defender or his/her designee shall determine the amount owed for public defender services.

7.2 If the defendant has some ability to pay, then in determining both the amount and method of payment any payment plan must take into consideration the financial resources of the defendant and the nature of the burden that payment of costs will impose.

7.3 The hourly rate for public defender services is set at $67.00 plus third-party costs;

7.3.1 The amount of time spent on a case shall conform to the amount of time reported on the public defender's timesheet.

7.3.2 A copy of the bill along with notification of where payments shall be made will be provided to the client and placed in the client's file.

7.4 If the person is acquitted or the charges are dismissed, no reimbursement will be sought.

8.0 CLOSING

Questions about this policy should be directed to the OPD Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

GROSS INCOME GUIDELINES

2009-2010

Number of Persons in Household	Gross Household Income Guidelines
1	$14,404
2	$19,378
3	$24,352
4	$29,327
5	$34,301
6	$39,275
7	$44,249
8	$49,223
Each Additional Member Add:	$4,974

ATTACHMENT B

STANDARD LETTER OF NOTIFICATION OF DENIAL

Name
Regional Deputy Public Defender
Region (#)
(Address)

(Date)

(Client Name)
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111 MCA to the information you provided on your indigency questionnaire, I have determined that you do not qualify for public defender services. The Office of the State Public Defender will ask the Court to rescind the appointment of a public defender. You must hire a private attorney within 10 days of this letter or represent yourself.

Your next court appearance is scheduled for (date) (time) in _____ Court.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your indigency questionnaire available to the judge and the prosecutor for inspection.

Sincerely,

Regional Deputy Public Defender
Region (#)

ATTACHMENT C

MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER

Name
Regional Deputy Public Defender
Region (#)
(Address)

Telephone:

MONTANA (XXXXX) JUDICIAL DISTRICT COURT, (XXXX) COUNTY

STATE OF MONTANA, Plaintiff, v. _____, Defendant.	)))))))))))	Cause No. _____ MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER

COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby moves the Court to rescind the appointment of the Office of the State Public Defender because the Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of the State Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

DATED this _____day of _____, 200__.

_____
(Name)
Regional Deputy Public Defender
Region (#)

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing MOTION TO RESCIND APPOINTMENT, postage prepaid, by U.S. mail, to the following:

Dated this _____day of _____, 200___.

_____

Office of the State Public Defender
Administrative Policies

Subject: **Closing Cases**	Policy No.: **106**
Title	Pages: **2**
Section:	Last Review Date: **02/20/09**
Effective Date: **10/01/07**	Revision Date: **04/28/09**

1.0 POLICY

The Office of the State Public Defender has established the following procedures for closing cases.

2.0 PROCEDURES

2.1 CRIMINAL CASES

2.1.1 Felony criminal cases shall be closed not later than:

2.1.2.1 After dismissal; or

2.1.2.2 After receipt of the official judgment and the client has been advised of his appeal and sentence review rights.

2.1.2 Misdemeanor criminal cases shall be closed:

2.1.2.1 After dismissal; or

2.1.2.2 After sentencing.

2.1.3 Criminal cases shall be deemed inactive:

2.1.2.1 When the client is missing and there is no real expectation that s/he will turn up in a few weeks (true absconders).

2.1.2.2 When the client is serving time in another state and there is not expectation that the prosecution will do anything until the client's release.

2.2 YOUTH COURT CASES

2.2.1 Youth court cases shall be closed:

2.2.2.1 After dismissal; or

2.2.2.2 Upon receipt of the Order of Adjudication and the time for appeal has expired without an appeal being filed.

2.2.2 Youth court cases shall be deemed inactive:

2.2.2.1 When the client is missing and there is no real expectation that s/he will turn up in a few weeks (true absconders).

2.2.2.2 When the client is in placement out-of-state and there is not expectation that the prosecution will do anything until the client's release.

2.3 INVOLUNTARY COMMITMENT CASES

Involuntary commitment cases shall be closed:

2.3.1 After dismissal; or

2.3.2 After commitment and the time for appeal has expired without an appeal being filed.

2.4 INCAPACITATED PERSONS CASES

2.4.1 Incapacitated persons cases shall be closed:

2.4.1.1 After dismissal of the petition; or

2.4.1.2 Upon termination of the guardianship

2.4.2 Incapacitated persons cases shall be deemed inactive:

2.4.2.1 After the guardianship and/or conservatorship is granted, but yearly reporting by the guardian and/or conservator is ordered.

2.5 DEPENDENT/NEGLECT CASES

2.5.1 Dependent/neglect cases shall be closed:

2.5.1.1 After dismissal; or

2.5.1.2 After the relinquishment of parental rights by the client; or

2.5.1.3 After receipt of an Order Terminating Rights and the time for appeal has expired without an appeal being filed.

2.6 APPEALS OF ALL CASES

2.6.1 All appeal cases shall be closed after a decision by the Montana Supreme Court, and the time for a motion to reconsider has expired without the filing of said motion. If a motion for reconsideration is filed, the case shall be closed upon final decision pursuant to the motion.

2.6.2 Appeal cases shall be deemed inactive when awaiting the Court's decision.

2.7 SENTENCE REVIEW

Sentence review cases shall be closed after the decision of the Sentence Review Board has been issued and received.

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Client File Destruction**	Policy No.: **107**
Title:	Pages: **2**
Section:	Last Review Date:
Effective Date: **3-15-10**	Revision Date:

1.0 POLICY

1.1 All Office of the State Public Defender (OPD) client files are the property of the State of Montana and disposition of files must follow the rules established by the Montana Secretary of State.

1.2 OPD has established the following procedures for disposition of client files. This policy applies to all client files, whether maintained by OPD offices or by contract attorneys.

1.3 This retention schedule applies to investigative files that are maintained separately from the case file.

1.4 This retention schedule applies to mental health consultation files that are maintained separately from the case file.

2.0 PROCEDURE

2.1 FELONY CASES

2.1.1 Deferred Sentences

Files wherein a deferred sentence was imposed will be destroyed eight years after judgment.

2.1.2 Suspended Sentences

Files wherein a suspended sentence was imposed will be destroyed after completion of the sentence. If the sentence is for a period of commitment followed by a suspended sentence, the file will be destroyed after completion of the suspended portion of the sentence.

2.1.3 Commitment Sentences

Files wherein the sentence is one of commitment will be destroyed five years after the entry of judgment.

2.1.4 Individual offices will retain the file, within their discretion, when:

2.1.4.1 The file is that of a client whom the office believes will be a client again; or

2.1.4.2 The file contains briefs or pleadings that may be of use in new cases and the briefs or pleadings have not yet been entered into a brief bank.

2.2 MISDEMEANOR CASES

Misdemeanor files, three or more years old, will be destroyed unless there is a pending Order to Show Cause, Petition to Revoke or warrant relating to the case.

2.3 JUVENILE CASES
Juvenile files shall be destroyed when the youth reaches the age of 21, unless the Court has extended jurisdiction to the age of 25 years.

2.4 DEPENDENT/NEGLECT CASES
Dependent/neglect files shall be destroyed when:
2.4.1 The case has been closed for five years; or
2.4.2 The concerned children have reached the age of 18; or
2.4.3 The children have been adopted.

2.5 INVOLUNTARY COMMITMENT OR GUARDIANSHIP CASES
Involuntary commitment or guardianship files will be destroyed five years after the date of commitment.

2.6 SENTENCE REVIEW CASES
Sentence review files will be destroyed three years following the date of decision.

2.7 POSTCONVICTION RELIEF CASES
Postconviction relief files will be destroyed three years following the date of decision, after notification to the client that the file will be destroyed.

2.8 APPELLATE CASES
Appellate files will be destroyed ten years after the Supreme Court opinion is issued.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Case Status Reporting/Review**	Policy No.: **108**
Title	Pages: **3**
Section:	Last Review Date:
Effective Date: **11/01/07**	Revision Date: **11/02/2009**

1. POLICY

The Office of the State Public Defender (OPD) has established the following procedures to provide uniform case data and to enable the comparison of case assignments across the public defender system.

2. ENTRY IN CASE MANAGEMENT SYSTEM

All OPD cases are to be entered into the case management database using the following definitions and procedures.

2.1. Standard Definitions

Standard definitions of Case Status and Case Type are defined in Attachment A.

2.2. Procedures

2.2.1. All cases must first be entered with an opened status before they are put into a closed or inactive status. This is necessary to account for all cases processed through OPD.

2.2.2. All cases must be assigned an attorney. If the attorney is undetermined, elect "Attorney Pending" in the database until a determination of assignment has been made.

2.2.3. Cases are to be opened on a daily basis. If the opening of a case is delayed, the "Receive Date" must accurately reflect the intake date. All opened cases for a particular month must be entered into the database within five days of month end.

2.2.4. Each OPD attorney employee (FTE) shall close cases in conformity with this policy on a weekly basis. Refer to Policy 106, Closing Cases, for criteria to use in determining when to close a case.

2.2.5. All closures must be entered into the database within 10 days of month end. It is essential that the "Date Closed" entered in the database reflect the actual date of closure, NOT the date of data entry.

3.0 CASE STATUS REVIEW

The status of each case must be reviewed and certified to the Central Office on a regular basis.

3.1. Monthly Review

3.1.1 All FTE attorneys must review their assigned open and inactive cases within the first week of the month using the Open Case by Attorney Report.

3.1.2 Changes to case status must be identified on this report, and provided to an assigned support staff member in the office, so that all changes are updated in the database within 10 days of month end.

3.1.3 Support staff will initial each change made to case status, certifying that the database has been updated, and/or that notations were made to the case status notes on the file.

3.1.4 The aging reports will be maintained by each attorney on a monthly basis.

3.2. Quarterly Review

3.2.1 On a quarterly basis, a reviewing manager (managing attorney and/or Regional Deputy Public Defender) must meet with each FTE Attorney to review their caseload. This review is intended to ensure that the status of each case is current in the database.

3.2.2 The reviewing manager will certify that this review process is complete by signing the report (Open Case by Attorney Report) and scanning a copy to the Central Office.

4.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

CASE STATUS

OPD has defined three standard case statuses to be used statewide: OPEN, CLOSED, and INACTIVE (the only valid statuses begin with all caps).

1. **OPEN CASE STATUS**
   - OPEN – FTE (All cases assigned to an OPD-employed attorney)
   - OPEN – Conflict (Conflict case assigned to a contract attorney)
   - OPEN – Contract (Non-conflict case assigned to a contract attorney)
   - OPEN – Sentence Review
   - OPEN – Warrant (Actively being worked on)
   - OPEN – Remanded (Includes cases from Supreme Court or District Court)
   - OPEN – Appeal (ADO use only—Supreme Court appeals)

2. **CLOSED CASE STATUS**
   - CLOSED – Denied (Case not accepted by OPD)
   - CLOSED – Dismissed
   - CLOSED – Convicted Trial
   - CLOSED – Convicted Plea
   - CLOSED – Adjudication
   - CLOSED – Acquitted
   - CLOSED – Private Counsel Elected
   - CLOSED – Contract/Conflict (Outside Counsel)
   - CLOSED – Awaiting Judgment
   - CLOSED – Other
   - CLOSED – Commitment (DI Cases)
   - CLOSED – Rights Terminated (DN)
   - CLOSED – Relinquished (DN)
   - CLOSED – Consent Decree (DJ Cases)
   - CLOSED – Affirmed (ADO use only)
   - CLOSED – Granted (ADO use only)
   - CLOSED – Remanded (ADO use only)

3. **INACTIVE CASE STATUS**
   - INACTIVE – Warrant (Client has absconded)
   - INACTIVE – Deferred (Includes both deferred prosecution and deferred imposition)
   - INACTIVE – 5 Justice Panel (ADO use only)
   - INACTIVE – Submitted to EB (ADO use only)
   - INACTIVE – Guardian (DG)

CASE TYPE

Case types have been defined to include all courts serviced by OPD. The naming convention is based on the cause numbers issued by the courts.

CR	Lower Court Criminal Complaint
DA	Supreme Court Appeal (ADO only)
DC	District Court
DD	Developmentally Disabled
DG	Guardianship
DI	Involuntary Mental Health Commitment
DJ	Youth Court
DN	Abuse and Neglect
DV	Post Conviction Relief
OP	Writ
TK	Lower Court Ticket

Office of the State Public Defender
Administrative Policies

Subject: **Client Grievance Procedure**	Policy No.: **110**
Title: **47**	Pages: **2**
Section: **1-202(10)**	Last Review Date: **02/20/09**
Effective Date: **7/1/06**	Revision Date: **04/28/09**

1.0 POLICY

The Office of the State Public Defender has established the following procedures for clients alleging grievance against the public defender attorney assigned to the client's case.

2.0 PROCEDURE

2.1 WRITTEN COMPLAINT

Any client alleging grievance against the public defender attorney assigned to the client's case shall complete a written statement of grievance and submit it to the appropriate regional deputy public defender.

2.2 IMMEDIATE ACTION ON WRITTEN COMPLAINT

Upon receipt of a signed, written complaint against a public defender, the regional deputy shall take the following immediate actions:

A. Contact the complainant (either in person or via telephone call) for the purpose of obtaining further clarification regarding the facts alleged;

B. Provide the respondent attorney with a complete copy of the complaint and follow up statement, if any;

C. Carefully review the complaint; and

D. Meet in person with the respondent attorney to discuss appropriate action to be taken.

2.3 WRITTEN DECISION BY REGIONAL DEPUTY PUBLIC DEFENDER

Following step 2.2, the regional deputy shall make an initial decision regarding action, if any, to be taken by the respondent attorney and shall, thereafter, advise the complainant of the decision in writing.

2.4 DETERMINATION DENYING CHANGE OF COUNSEL; APPEAL PROCESS

A. Failure of the Complaint to Set Forth Adequate Grounds for Change of Counsel: If the regional deputy determines that the complaint fails to establish adequate grounds for change of counsel, the regional deputy shall so advise the complainant in writing on a form approved by the Chief Public Defender. In addition, the regional deputy shall personally notify the complainant of the decision in person or via telephone call. Any decision denying a complainant's request for change of attorney shall inform the complainant of the right to file a request for further review by

the Grievance Review Officer for the Office of the State Public Defender, as designated by the Chief Public Defender.

B. Appeal to Grievance Review Officer: If the complainant disagrees with the decision of the regional deputy public defender, the complainant shall notify the regional deputy of that fact at the time the regional deputy notifies the complainant of the fact of denial. In such event, the regional deputy shall mail the grievance packet (containing a copy of the original complaint and a copy of the regional deputy's decision) to the Grievance Review Officer at his/her address of record.

C. Review and Decision by Grievance Review Officer: Within three working days of receipt of a grievance packet, the Grievance Review Officer shall issue a written decision either upholding the regional deputy's decision or reversing it with instructions to implement an immediate change of counsel. The Grievance Review Officer may, but is not required to, consult with the complainant prior to issuing the decision. If the Grievance Review Officer upholds the decision to deny a change of counsel, the Grievance Review Officer shall notify the complainant in person of the fact that the complainant retains the right to request a change of counsel from the appropriate court.

D. Motion for Change of Counsel: If the complainant decides, after proper notification from the Grievance Review Officer, that the complainant nonetheless wishes to pursue the grievance with the court of record, the Grievance Review Officer shall notify counsel of record in writing to immediately file an appropriate motion.

2.5 DETERMINATION APPROVING CHANGE OF COUNSEL

Adequacy of the Complaint to Support Change of Counsel: If the regional deputy decides that the complaint does provide adequate grounds for change of counsel, the regional deputy shall immediately effectuate a substitution of counsel and shall advise the complainant, the attorney of record, new counsel, and the court. Reasons for the change shall be documented in the regional deputy's file but shall not be provided to the court, to new counsel, or to opposing counsel. The notice of substitution shall conform to standard pleadings of the jurisdiction.

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Management Caseload Limitations**	Policy No.: **114**
Title: **47**	Pages: **2**
Section: **1-215(2)(h)**	Last Review Date: **8-30-10**
Effective Date: **4-23-10**	Revision Date: **9-3-10**

1.0 POLICY

Pursuant to Section 47-1-215(2)(h), MCA, the following policy sets maximum caseloads for the Chief Public Defender, Chief Appellate Defender, Regional Deputy Public Defenders and Managing Attorneys. The policy is intended to serve the requirements of managers to maintain a caseload alongside the attorneys they supervise, while also providing effective management.

2.0 PROCEDURE

2.1 Maximum caseloads as are defined herein are intended to be strongly recommended while understanding that unusual circumstance in any office may make them unrealistic.

2.2 Maximum caseload limits are expressed in terms of hours per calendar year.

2.3 The maximum caseload limit for the Chief Public Defender is 300 hours.

2.3.1 Any trial work done shall be done as second chair.

2.3.2 In determining the hours attributable to the maximum caseload, time spent mentoring other public defenders is not included.

2.4 The maximum caseload limit for the Chief Appellate Defender is 1000 hours.

2.5 The maximum caseload limits for each Regional Deputy Public Defender are as follows:

2.5.1 Region 1 600 hours
2.5.2 Region 2 600 hours
2.5.3 Region 3 1000 hours
2.5.4 Region 4 1000 hours
2.5.5 Region 5 1000 hours
2.5.6 Region 6 1400 hours
2.5.7 Region 7 1400 hours
2.5.8 Region 8 1000 hours
2.5.9 Region 9 600 hours
2.5.10 Region 10 1400 hours
2.5.11 Region 11 1400 hours

2.6 The maximum caseload limits for each Managing Attorney are as follows:

- **2.6.1** Kalispell 1040 hours
- **2.6.2** Polson 1500 hours
- **2.6.3** Hamilton 1500 hours
- **2.6.4** Great Falls 1700 hours

2.7 The Chief Public Defender will monitor the caseloads of the Regional Deputy Public Defenders and the Regional Deputy Public Defenders will monitor the caseloads of the Managing Attorneys, where applicable. Caseloads will be monitored on a monthly basis, taking into consideration the following variables and any others relevant at the time:

- **2.7.1** Capabilities of the individual
- **2.7.2** Number of personnel supervised
- **2.7.3** Attorney vacancies
- **2.7.4** Management structure
- **2.7.5** Nature and status of cases being handled
- **2.7.6** Travel requirements
- **2.7.7** Extraordinary, temporary circumstances

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Assigning Cases**	Policy No.: **115**
Title **47**	Pages: **1**
Section: **1-202**	Last Review Date: **02/20/09**
Effective Date: **7/01/06**	Revision Date: **04/29/09**

1.0 POLICY

1.1. Upon the receipt of a Notice of Appointment of the Office of the State Public Defender, or receipt of a case in any other fashion, the following are the responsibilities of the Regional Deputy Public Defender:

A. When a contract attorney is being used:
   i. Determine whether the contract attorney is willing to be assigned to the case;
   ii. Prepare and file with the court from which the case comes, a notice of who will be the attorney of record;
   iii. Send a copy of the notice to the contract attorney who has agreed to handle the case;
   iv. Keep a permanent file of said notices;
   v. Maintain a database of appointments on a system determined by the Office of the State Public Defender.

B. When an attorney employed in a public defender office is being used:
   i. Submit the information concerning the case to the appropriate public defender office.

1.2. Upon the receipt of a case from the Regional Deputy Public Defender, the Managing Attorney in a public defender office will:

A. Assign the case to an attorney in the office;

B. Prepare and file with the court from which the case comes, a notice of who will be the attorney of record;

C. Maintain a database of appointments on a system determined by the Office of the State Public Defender.

2.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Conflict Cases**	Policy No.: **116**
Title: **47**	Pages: **1**
Section: **1-202**	Last Review Date: **02-20-09**
Effective Date: **5-11-07**	Revision Date: **04-29-09**

1.0 POLICY

The Office of the State Public Defender (OPD) has established the following procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically.

2.0 PROCEDURE

2.1 When a case is determined to be a conflict of interest, the Regional Deputy Public Defender shall assign the case to a contract attorney whose name is maintained on the conflict attorney list or to a public defender employed outside his/her region.

2.2 The conflict attorney shall submit bills for the payment of attorney time to the Contract Manager. In reviewing bills, the Contract Manager shall:

- **2.2.1** Review the total hours of work claimed;
- **2.2.2** Review the work expended without reference to the charge or the parties involved;
- **2.2.3** Review any costs claimed, referencing any pre-approval requirements.

2.3 Costs, other than attorney fees, expected to be incurred by a conflict attorney, which exceed $200, will be pre-approved by the Training Coordinator.

- **2.3.1** In determining the disposition of the pre-approval request, the Training Coordinator will not disclose any information about the case to the Contract Manager or the Chief Public Defender.
- **2.3.2** The review of requests for pre-approval of costs shall, in most cases, only investigate whether other options are available that are more cost-effective and just as good.
- **2.3.3** For pre-approval of costs that are extraordinary or questionable, the Training Coordinator may ask the Public Defender Commission's Contracts Process and Approvals Committee for assistance.

2.4 The Chief Public Defender, Contract Manager, and Training Coordinator will confer with each other about the availability of experts or other options relating to costs in cases without reference to the specifics of any case.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Caseload Management**	Policy No.: **117**
Title: **47**	Pages: **2**
Section: **1-105**	Last Review Date:
Effective Date: **10-1-07**	Revision Date:

1.0 POLICY

1.1 A mission of the Office of the State Public Defender (OPD) is to insure that no attorney doing public defender work, either as an employee or as a contract attorney, has a workload of such an amount that clients are not being adequately represented and/or the wellbeing of the attorney is jeopardized.

1.2 The regional deputy public defenders and the managing attorneys in each public defender office are responsible for managing the workloads of the attorneys they supervise.

2.0 PROCEDURE

2.1 Contract Attorneys

Regional deputy public defenders will review the number of open cases that each contract public defender is carrying to ensure that the workload is manageable and will, at the time any new case is assigned, ascertain that the contract attorney has a workload that allows sufficient time to be devoted to the new case and client.

When a contract attorney's workload will not allow time to adequately represent a client, the client's case shall be assigned to another contract public defender. If another local contract attomey can not be found, the Chief Public Defender shall be so advised and assist in locating counsel for the client.

2.2 Employed Attorneys

Regional deputy public defenders and managing attorneys will discuss workload at least monthly with each employed public defender they supervise. When a public defender expresses a problem with his/her workload, the supervising attorney shall work with the public defender to alleviate the workload. The supervising attorney shall consider doing any of the following:

A. discontinue assigning cases to the public defender for a specified time;
B. discontinue assigning specific kinds of cases to the public defender for a specified time;
C. assign other public defenders to assist on particular cases;
D. assign extra staff or an investigator to assist on particular cases;
E. reassign particular cases; and/or
F. negotiate time off work for the public defender.

The supervising attorney shall consider any other solutions that the public defender suffering excessive caseload may have.

2.3 The regional deputy public defenders and managing attorneys shall keep the Chief Public Defender fully informed about workload problems expressed by the attorneys they manage. The Chief Public Defender shall report to the Public Defender Commission as workload problems arise.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Mentoring**	Policy No.: **118**
Title:	Pages: **1**
Section:	Last Review Date:
Effective Date: **8-17-09**	Revision Date:

1.0 POLICY

The Office of the State Public Defender (OPD) recognizes the need and benefit of using the expertise of experienced attorneys in the system to mentor other attorneys. OPD recognizes the benefit to clients of the sharing of knowledge of each of us throughout the system. For these reasons, OPD establishes the following procedures.

2.0 PROCEDURE

2.1 There is, for purposes of this policy, a Mentoring Panel made up of the Chief Public Defender, the Training Officer, the Contracts Manager and at least two other experienced public defenders selected by the Chief Public Defender. The two other experienced public defenders shall be selected on a case-by-case basis.

2.2 Any public defender who is preparing a case to go to trial on a felony involving a crime in Title 45, Chapter 5, Parts 1, 3, 4, 5 shall contact the Chief Public Defender at least 90 days before trial and request a meeting with the Mentoring Panel. The Chief Public Defender shall select the participants and arrange the meeting which can be in person, by telephone, or by VisionNet, as needed at the time.

2.3 The trial attorney will be prepared to present to the Panel a synopsis of the facts from the perspective of the prosecution, the anticipated theory of defense, and any requests for experts, second-chair assistance, travel arrangements, investigative needs, etc.

2.4 Any public defender who anticipates trying a case other than those listed above, may request a meeting with the Mentoring Panel by contacting the Chief Public Defender and the same procedure will be used.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Determining Conflicts of Interest**	Policy No.: **119**
Title	Pages: **2**
Section:	Last Review Date: 9/28/09
Effective Date: **10/01/07**	Revision Date: **10/16/09**

1.0 POLICY

1.1 Conflicts of interest are of paramount concern to the Office of the State Public Defender (OPD). Every office within the system must be scrupulous in avoiding conflicts of interest.

1.2 This policy specifically recognizes that waivers of conflicts of interest are, occasionally, in the best interest of the client and should be used where appropriate.

2.0 PROCEDURES

2.1 When a client is qualified for OPD services under Policy 105, Determination of Indigence:

- **2.1.1** The case information will be entered into the case management system as soon as possible.
- **2.1.2** If the case management system flags a potential conflict of interest, the Regional Deputy Public Defender will do sufficient inquiry into the nature of the conflict.
- **2.1.3** The Regional Deputy Public Defender will make a determination as to whether an actual conflict of interest exists.
- **2.1.4** If a conflict of interest does exist, the Regional Deputy Public Defender will assign the case to a private contract attorney or to a public defender employed outside his or her region as per Policy 116, Conflict Cases.

2.2 When an attorney in a public defender office is assigned a case and, during the course of representation, a conflict of interest becomes evident, the public defender shall bring the conflict of interest to the attention of the Regional Deputy Public Defender.

- **2.2.1** The Regional Deputy Public Defender shall make a determination of a conflict of interest as described in 2.1.
- **2.2.2** If the public defender assigned to the case disagrees with the finding of the Regional Deputy Public Defender, the decision may be appealed to the Training Officer.
- **2.2.3** Any appeal taken to the Training Officer shall be in writing and set forth all relevant facts, while preserving confidentiality, related to the conflict of interest question.

2.2.4 The Training Officer shall review the materials and determine whether a conflict of interest, in fact, exists. If a conflict does exist, he will refer the matter back to the Regional Deputy Public Defender for assignment to a private attorney

2.2.5 The finding of the Training Officer shall be final.

3.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Outside Employment**	Policy No.: **120**
Title:	Pages: **1**
Section:	Last Review Date:
Effective Date: **8-17-10**	Revision Date:

1.0 POLICY

1.1 In conformance with constitutional and case law, the Office of the State Public Defender (OPD) intends to limit outside employment by full-time employees to prevent conflict of interest situations or the clear appearance thereof.

1.2 Any employee engaged in outside employment must advise their regional deputy public defender or supervisor of the nature and details of their outside employment.

2.0 PUBLIC DEFENDERS

2.1 Full-time public defenders are restricted from the outside practice of law while on state time or with the use of any state property or resources, except as provided for in the Pro Bono Policy (OPD Policy 525).

2.2 Full-time public defenders may not take cases in the outside practice of law that would place the public defender in a conflict of interest situation as defined by Rules 1.7 and 1.8 of the Montana Rules of Professional Conduct.

2.3 A public defender engaged in the outside practice of law shall not enter into any agreements for representation with persons who have qualified for public defender services.

3.0 NON-ATTORNEY STAFF

3.1 Other OPD employees shall be restricted from outside employment if the outside employment creates a conflict of interest situation or the clear appearance thereof.

4.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Staff Investigators**	Policy No.: **121**
Title:	Pages: **2**
Section:	Last Review Date:
Effective Date: **8-10-10**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) has full-time investigators, throughout the state. The number of investigators, however, is small and the caseloads are very high. To insure the best and most effective use of this limited resource, the following policy is adopted.

1.2 The regional deputy public defenders, managing attorneys and team leaders in each public defender office are responsible for managing the workloads of the investigators they supervise.

2.0 PRIORITY CASES

2.1 It shall be the priority of every OPD office that its full-time investigators work primarily on felony cases.

2.2 Investigators are not, however, prohibited from working on misdemeanor cases or civil cases.

3.0 PROCEDURES

The attorney seeking investigative assistance shall do the following:

3.1 Submit an Investigation Request form (Attachment A) to the Regional Deputy Public Defender, Managing Attorney or Team Leader for approval.

3.2 The request must set forth sufficient detail such that the supervisor can make a sufficient determination of the necessity for investigation.

3.3 The request does not need to include all available discovery.

3.4 The supervisor must discuss the request with the investigator or investigators, to determine if they have the necessary time to do the investigation sought.

3.5 An investigator may only begin working on a case, when an approved request, signed by the appropriate individual, has been received.

3.6 Each attorney, after obtaining an approved request, shall supply the investigator every piece of discovery received by that attorney from the inception of the case and into the trial. The attorney shall not impede the investigator's ability to do their job thoroughly by deciding what items to provide to the investigator.

3.7 Exceptions to the prior approval requirement may be made in emergency situations where an attorney needs immediate photographs of an injured client in jail; photos of a crime scene as it is released by law enforcement; or, other such circumstance.

4.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

OFFICE OF THE STATE PUBLIC DEFENDER

BRIAN SCHWEITZER
GOVERNOR

RANDI HOOD
CHIEF PUBLIC DEFENDER

STATE OF MONTANA

Phone: (406) 496-6080
Fax: (406) 496- 6098

44 WEST PARK STREET
BUTTE, MONTANA 59701

Investigation Request

Attorney requesting investigation: _____ Date: _____

Case Number : _____ OPD #: _____

Defendant's Name: _____

Attorney's Investigation Request: (Please identify what you want investigated, names of people to be interviewed, what questions you desire, any photos needed to be taken and additional information needed to assist in your case, any deadlines known)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Was discovery provided with request: Yes_____ No_____

Date request received_____ Investigator _____

For Regional Use Only
[APPROVED / DENIED]

_____ _____
RDPD Signature Date

Office of the State Public Defender
Administrative Policies

Subject: **Pre-Approval of Client Costs**	Policy No.: **125**
Title:	Pages: **11**
Section:	Last Review Date: **01-29-10**
Effective Date: **5-1-07**	Revision Date: **5-04-10**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) requires pre-approval of all client costs expected to exceed $200 per task in all cases.

1.2 All cases involving salaried (FTE), contract and conflict attorneys, including appellate and Major Crime Unit cases, are subject to this policy.

2.0 DEFINITIONS

2.1 Client costs, hereinafter called costs, shall be defined as all monies to be expended in the preparation, investigation and litigation of public defender cases.

2.2 A task shall be defined as work performed by a non-attorney in the preparation, investigation and litigation of a public defender case.

3.0 PROCEDURE

3.1 All Costs Exceeding $200

3.1.1 The pre-approval process for all costs expected to exceed $200 per task shall commence with the completion of the appropriate Request for Pre-approval of Costs form by the attorney assigned to the case. There are separate forms and procedures for mental health and investigative services (see below), and for all other services (Attachment A).

3.1.2 Requests for pre-approval of costs that include travel must separate travel costs from the task costs. Any travel arrangement involving airline travel and/or overnight lodging will be arranged or delegated by the Central Office. The requesting attorney will contact the Central Office for travel arrangements not less than two weeks before the day of travel.

3.1.3 The pre-approval request form must be signed and dated by the requesting attorney and forwarded to one of the following persons for approval:

3.1.3.1 For non-conflict cases assigned to an FTE or contract attorney, submit the request to the Regional Deputy Public Defender (RDPD) assigning the case; or

3.1.3.2 For Major Crime Unit cases, submit the request to the Major Crime Unit Manager;

3.1.3.3 For conflict cases, submit the request to the Training Coordinator; or

3.1.3.4 For appellate cases, submit the request to the Chief Appellate Defender. Appellate transcript requests are exempt from this policy.

3.1.4 The RDPD, Major Crime Unit Manager, Training Coordinator or Chief Appellate Defender shall review the request and shall explore alternative, fiscally responsible options with the attorney before approving or denying said request by checking the

appropriate box on the form and then signing and dating the same.

3.1.5 The RDPD and Major Crime Unit Manager will submit all requests to the Central Office for final approval. The Chief Public Defender will review FTE requests. The Contract Manager will review contract attorney requests.

3.1.6 The original form is to be retained by the person approving or denying the request and a copy thereof forwarded to the requesting attorney.

3.2 Pre-approval of Costs for Mental Health Services

3.2.1 The requesting attorney will consult with the OPD Mental Health Consultant regarding the proposed service prior to initiating the pre-approval request.

3.2.2 If the Mental Health Consultant concurs, the attorney will complete the Mental Health pre-approval form (Attachment B) and submit it to the appropriate person for approval, as per sections 3.1.2 through 3.1.5 above.

3.3 Pre-approval of Costs for Investigative Services

3.3.1 The requesting attorney will consult with the OPD Investigator Supervisor regarding the proposed service prior to initiating the pre-approval request.

3.3.2 If the Investigator Supervisor concurs, the attorney will complete the Investigator pre-approval form (Attachment C) and submit it to the appropriate person for approval, as per sections 3.1.2 through 3.1.5 above.

3.4 The requesting attorney is responsible for keeping the pre-approved costs within the pre-approved amount. He or she must be familiar with the task being provided and the cost of the task as funds are being expended. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of the new amount prior to incurring any costs on the appropriate Supplemental Request form (Attachments D-F).

3.5 Post-approval of costs will not be granted except in extraordinary circumstances.

3.6 The original pre-approval forms are to be used to track the pre-approved costs, and are to be attached to the claim form when they are forwarded to the Central Office for final payment. Tasks that are billed incrementally are to have a copy of the pre-approval attached with a notation indicating the remaining funds available.

3.7 Costs incurred without pre-approval will not be paid. Costs that exceed the pre-approved amount without a supplemental approval will not be paid.

4.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Attachment A

State of Montana

Office of the State Public Defender

REQUEST FOR PRE-APPROVAL OF CLIENT COSTS

All client costs (including travel) exceeding $200 per task in each case must be pre-approved by submitting this request form to the appropriate person as follows:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Conflict Manager in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*
- The Chief Appellate Defender in appellate cases *(Jim Wheelis, P.O. Box 200145, Helena MT 59620)*

Requesting Attorney's Name	Date
Case Name	OPD Case ID Number
Task Provider's Name	Region Case Originated
Requested Pre-Approval Amount for Task	Requested Pre-Approval Amount for Travel (time & miles)

*Note: travel reimbursement is paid at the **current state rate** for mileage, lodging and per diem.*

The requesting attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on a new form prior to incurring any additional costs. It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.

Short Justification for Task and Cost: _____

_____

_____

_____

Requesting Attorney Signature	Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval (see above).

Authorized Signature	☐ Approve ☐ Deny	Date

*NOTE: Regional Deputy Public Defenders must submit all requests to the Central Office for approval **regardless of the amount requested.** The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.*

For Central Office Use Only—*Non-Conflict Requests*

☐ Approve ☐ Deny

Contract Manager/Chief Public Defender	Date

Attachment B

State of Montana

Office of the State Public Defender

REQUEST FOR PRE-APPROVAL OF CLIENT COSTS

MENTAL HEALTH PROFESSIONAL

All client costs exceeding $200 per task in each case must be pre-approved by submitting this request form to the appropriate person as follows:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys
  (Eric Olson, 610 N. Woody, Missoula MT 59802)

Requesting Attorney's Name	Date
Case Name	OPD Case Number
Task Provider's Name	Region Case Originated
Requested Pre-Approval Amount for Evaluation	Requested Pre-Approval Amount for Travel (time & miles)

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

The requesting attorney is responsible for keeping costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on a new form **prior to incurring any costs over the pre-approved amount**. It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.

Per Protocol, type of MH Professional involvement requested:

☐ MH Professional Consultation
☐ MH Professional Screening
☐ MH Professional Evaluation (comprehensive evaluation)
☐ Chemical Dependency Evaluation
☐ Sentencing Options
☐ Fitness to Proceed
☐ Sex Offender Evaluation
☐ Testimony

Justification for task, referral questions and cost: _____

_____

_____

_____

Next scheduled court appearance _____

Type and Estimated number of pages for Professional to review:

☐ Legal documents (_____ pages)
☐ Medical record (_____ pages)
☐ Other records requested and have not arrived to date

I. Have you consulted with the OPD Mental Health Consultant regarding this request? *(Required for all evaluations except sex offender evaluations)*

☐ Yes Date and time of consultation _____

☐ OPD MH Consultant has reviewed and concurs with request *(Attach documentation or signature)*

II. Have you completed and attached the MH Referral Question Checklist?

☐ Yes

_____ _____

Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval (see page 1).

_____ _____

Authorized Signature ☐ Approve ☐ Deny Date

Regional Deputy Public Defenders: **All requests, regardless of the amount requested, are to be submitted to the Central Office for approval.** The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.

For Central Office Use Only—Non-Conflict Requests

☐ Approve ☐ Deny

_____ _____

Contract Manager/Chief Public Defender Date

Notes to mental health professional: (1) A *Memorandum of Understanding, Mental Health Professional* must be on file with OPD prior to commencing services. (2) **Immediately contact the referring attorney at the first indication that additional time is necessary to answer the referral question!** Supplemental approval must be provided for payment over and above the initial pre-approved amount. Justification must be provided regarding the specifics of what additional time spent on the case will entail.

Attachment C

State of Montana

Office of the State Public Defender

REQUEST FOR PRE-APPROVAL OF CLIENT COSTS INVESTIGATOR

All client costs exceeding $200 per task in each case must be pre-approved by submitting this request form to the appropriate person as follows:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*

Requesting Attorney's Name	Date
Case Name	OPD Case ID Number
Task Provider's Name	Region Case Originated
Requested Pre-Approval Amount for Task	Requested Pre-Approval Amount for Travel (time & miles)

*Note: travel reimbursement is paid at the **current state rate** for mileage, lodging and per diem.*

The requesting attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on a new form prior to incurring any additional costs. It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.

Justification for Task: _____

_____

_____

_____

Next scheduled court appearance _____

I. Have you consulted with the OPD Investigator Supervisor regarding this request?

☐ Yes Date and time of consultation _____

☐ OPD Investigator Supervisor has reviewed and concurs with request
(Attach documentation or signature)

II. Have you completed and attached the Investigative Request?

☐ Yes

Requesting Attorney Signature _____ Date _____

Please be advised that a ***Memorandum of Understanding, Investigator*** must be completed prior to beginning work on this case.

INVESTIGATOR: Immediately contact the referring attorney at the first indication that additional time is necessary to complete the investigation! If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on the approved form prior to incurring any additional costs. Justification must be provided regarding the specifics of what additional time spent on the case will entail. **Post-approval of costs will not be granted except in extraordinary circumstances.**

The Requesting Attorney must complete and forward this form to the appropriate person for approval (see above).

Authorized Signature ☐ Approve ☐ Deny Date _____

Regional Deputy Public Defenders: **All requests, regardless of the amount requested, are to be submitted to the Central Office for approval.** The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.

For Central Office Use Only—Non-Conflict Requests

☐ Approve ☐ Deny

Contract Manager/Chief Public Defender _____ Date _____

Attachment D

State of Montana

Office of the State Public Defender

SUPPLEMENTAL REQUEST

FOR PRE-APPROVAL OF CLIENT COSTS

The assigned attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on this form prior to incurring any additional costs. ***It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.***

_____
Date

_____ _____
Task Provider's Name Requesting Attorney's Name

_____ _____
Case Name OPD Case ID Number

Original Pre-Approved Amount (attach copy of pre-approval form) _____

Amount of Supplemental Request for Additional Work _____

Amount of Supplemental Request for Travel _____

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

Revised Total Amount Requested for Pre-Approval _____

Justification for supplemental request: _____

_____

_____

_____ _____
Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*
- The Chief Appellate Defender in appellate cases *(Jim Wheelis, P.O. Box 200145, Helena MT 59620)*

_____ _____
Authorized Signature ☐ Approve ☐ Deny Date

NOTE: *Regional Deputy Public Defenders must submit all requests to the Central Office for approval* ***regardless of the amount requested.*** *The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.*

For Central Office Use Only (Non-Conflict Cases)

☐ Approve ☐ Deny

_____ _____
Contract Manager/Chief Public Defender Date

Attachment E

State of Montana

Office of the State Public Defender

SUPPLEMENTAL REQUEST

FOR PRE-APPROVAL OF CLIENT COSTS
MENTAL HEALTH PROFESSIONAL

The assigned attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on this form prior to incurring any additional costs. ***It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.***

_____
Date

_____ _____
Task Provider's Name Requesting Attorney's Name

_____ _____
Case Name OPD Case ID Number

Original Pre-Approved Amount (attach copy of pre-approval form) _____

Amount of Supplemental Request for ☐ Evaluation **or** ☐ Testimony (check one) _____

Amount of Supplemental Request for Travel _____

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

Revised Total Supplemental Amount Requested _____

Justification for supplemental request, including travel: _____

_____

_____

_____

Have you consulted with the OPD Mental Health Consultant regarding this request?

☐ Yes Date and time of consultation _____

☐ OPD MH Consultant has Reviewed and Concurs with request
(attach documentation or signature)

_____ _____
Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys
  (Eric Olson, 610 N. Woody, Missoula MT 59802)

_____ _____

Authorized Signature ☐ Approve ☐ Deny Date

NOTE: *Regional Deputy Public Defenders must submit all requests to the Central Office for approval* ***regardless of the amount requested.***

The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.

For Central Office Use Only—Non-Conflict Cases

☐ Approve ☐ Deny

_____ _____

Contract Manager/Chief Public Defender Date

Attachment F

State of Montana

Office of the State Public Defender

INVESTIGATOR SUPPLEMENTAL REQUEST

FOR PRE-APPROVAL OF CLIENT COSTS

The assigned attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on this form prior to incurring any additional costs. ***It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.***

_____
Date

_____ _____
Task Provider's Name Requesting Attorney's Name

_____ _____
Case Name OPD Case ID Number

Original Pre-Approved Amount (attach copy of pre-approval form) _____

Amount of Supplemental Request for Additional Work _____

Amount of Supplemental Request for Travel _____

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

Revised Total Amount Requested for Pre-Approval _____

Justification for supplemental request: _____

_____

Have you consulted with the OPD Investigator Supervisor regarding this request?

☐ Yes Date and time of consultation _____

☐ OPD Investigator Supervisor has reviewed and concurs with request
(Attach documentation or signature)

_____ _____
Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*

_____ _____
Authorized Signature ☐ Approve ☐ Deny Date

NOTE: Regional Deputy Public Defenders must submit all requests to the Central Office for approval ***regardless of the amount requested.*** *The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.*

For Central Office Use Only (Non-Conflict Cases)

☐ Approve ☐ Deny

_____ _____
Contract Manager/Chief Public Defender Date

Office of the State Public Defender
Administrative Policies

Subject: **Contract Counsel**	Policy No.: **130**
Title: **47**	Pages: **2**
Section: **1-216**	Last Review Date: **03-31-10**
Effective Date: **7-1-06**	Revision Date: **04-2-10**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) may enter into agreements with outside counsel to provide services pursuant to the Montana Public Defender Act (Act). These attorneys are independent contractors and are referred to herein as contract attorneys.

1.2 District court judges, the Supreme Court Administrator, and the counties may not contract for public defender/indigent defense services in those cases deemed the responsibility of OPD under the Act.

1.3 Contractor services are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff public defender services are unavailable, when conflict situations arise, or to alleviate workload issues.

2.0 PROCEDURE

2.1 Prospective contract counsel must complete the Attorney's Summary of Education and Experience as provided on the OPD website at http://publicdefender.mt.gov.

2.2 Upon receipt of the Attorney's Summary of Education and Experience information, the OPD Contract Manager will review the information and provide qualified applicants with a Memorandum of Understanding (MOU).

2.3 Prospective contract counsel acknowledge that they have read and agree to abide by the Public Defender Standards of Conduct by signing the MOU and returning it to the OPD. The MOU also requires that contract counsel complete Continuing Legal Education training annually, as determined by the Public Defender Commission.

2.4 Prospective contract counsel are placed in a pool based on their qualifications and the Region(s) in which they choose to work.

2.5 The Regional Deputy Public Defender is responsible for assigning specific cases to attorneys from the regional pool, ensuring that the attorney has the qualifications to handle the specific type of case being assigned.

2.6 The Regional Deputy Public Defender will monitor the performance of the contract counsel and will participate in the annual proficiency determination of each contract counsel.

3.0 PAYMENTS FOR SERVICES

3.1 The OPD shall directly pay contracted counsel for services rendered.

3.2 Contract counsel services shall be paid at the rate of $60 per hour for non-death penalty cases, and at the rate of $120 per hour for death penalty cases.

3.3 Pre-approved travel expenses shall be paid at the state travel rates.

3.4 OPD shall offer a stipend of up to $25 per month to help defray office costs such as telephone, postage, and copies.

3.5 Other expenses shall be paid if pre-approved per OPD Policy 125, Pre-Approval of Client Costs.

4.0 PAYMENT AND PROCEDURES

It is understood that contract counsel services will be supervised by the Regional Deputy Public Defender and the OPD Central Office.

Contract counsel shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. The forms and accompanying instructions are posted on the OPD web site at http://publicdefender.mt.gov. Hourly time shall be billed in tenths of an hour. Each form must contain the case number assigned by the regional office.

Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Office. The OPD Contract Manager will review, approve and pay said claim within thirty (30) days of receipt of the same. Claims for conflict services are to be submitted directly to the Contract Manager. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned case number.

Claims submitted more than 45 days from the last day of the month of service will be denied.

5.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Contract Mental Health Services**	Policy No.: **131**
Title: **47**	Pages: **2**
Section: **1-216**	Last Review Date:
Effective Date: **11-02-09**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) may enter into contracts with non-attorney professionals as necessary to deliver public defender services pursuant to the Montana Public Defender Act (Act).

2.0 PROCEDURE

2.1 Prospective contract mental health providers must complete the Memorandum of Understanding as provided on the OPD website at http://publicdefender.mt.gov and attach a Summary of Education and Experience.

2.2 Prospective contractors acknowledge that they have read and agree to abide by the ethical and practice Standards of their profession by signing the MOU and returning it to OPD. The MOU also requires that contractors complete required continuing educational units in courses relating to their profession, including training requirements established by OPD's Training Coordinator.

2.3 Cases will be referred to mental health professionals based on qualifications and experience. OPD is not obligated to assign any specific number of cases to a contractor, nor are contractors obligated to accept any case referred for assignment.

2.4 All contract mental health services are subject to OPD's pre-approval policy (Policy 125).

3.0 PAYMENTS FOR SERVICES

3.1 The OPD shall pay contractors directly for services rendered.

3.2 Contract mental health professionals shall be paid according to the rate schedule adopted by the Montana Public Defender Commission (Attachment A).

3.3 Pre-approved travel expenses shall be paid at the state travel rates.

3.4 Other expenses shall be paid as pre-approved under OPD procedures.

4.0 PAYMENT AND PROCEDURES

It is understood that contract mental health services will be supervised by the Regional Deputy Public Defender and the OPD Central Office.

Contract mental health providers shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. The forms and accompanying instructions are posted on the OPD web site at http://publicdefender.mt.gov. Each form must contain the case number assigned by the Regional Office.

Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Office. The OPD Contract Manager will review, approve and pay said claim within thirty (30) days of receipt of the same. Claims for conflict services are to be submitted directly to the Contract Manager. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned case number.

Claims submitted more than 45 days from the last day of the month of service will be denied.

5.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Contract Investigative Services**	Policy No.: **132**
Title: **47**	Pages: **2**
Section: **1-216**	Last Review Date:
Effective Date: **11-02-09**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) may enter into contracts with non-attorney professionals as necessary to deliver public defender services pursuant to the Montana Public Defender Act (Act).

1.2 State contracts are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff services are unavailable, when conflict situations arise, or to alleviate workload issues.

2.0 PROCEDURE

2.1 Prospective contract investigators must complete the Summary of Education and Experience as provided on the OPD website at http://publicdefender.mt.gov.

2.2 Upon receipt of the Summary of Education and Experience information, the OPD Investigator Supervisor will review the information and provide qualified applicants with a Memorandum of Understanding (MOU).

2.3 Prospective contractors acknowledge that they have read and agree to abide by the ethical and practice Standards of their profession by signing the MOU and returning it to OPD. The MOU also requires that contractors complete required continuing educational units in courses relating to their profession, including training requirements established by OPD's Training Coordinator.

2.4 Cases will be referred to investigators based on qualifications and experience. OPD is not obligated to assign any specific number of cases to a contractor, nor are contractors obligated to accept any case referred for assignment.

2.5 All contract investigative services are subject to OPD's pre-approval policy (Policy 125).

3.0 PAYMENTS FOR SERVICES

3.1 The OPD shall pay contractors directly for services rendered.

3.2 Contract investigator services shall be paid at the rate of $46 per hour.

3.3 Pre-approved travel expenses shall be paid at the state travel rates.

3.4 Other expenses shall be paid as pre-approved under OPD procedures.

4.0 PAYMENT AND PROCEDURES

It is understood that contract investigative services will be supervised by the Regional Deputy Public Defender and the OPD Central Office.

Contract investigators shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service.

The forms and accompanying instructions are posted on the OPD web site at http://publicdefender.mt.gov. Hourly time shall be billed in minutes. Each form must contain the case number assigned by the Regional Office.

Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Office. The OPD Contract Manager will review, approve and pay said claim within thirty (30) days of receipt of the same. Claims for conflict services are to be submitted directly to the Contract Manager. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned case number.

Claims submitted more than 45 days from the last day of the month of service will be denied.

5.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Proficiency Determination, Contract Counsel**	Policy No.: **135**
Title: **47**	Pages: **2**
Section: **1-202(9)**	Last Review Date:
Effective Date: **12-6-06**	Revision Date:

1.0 POLICY

1.1 Each private attorney providing contract services the Office of the State Public Defender (OPD) shall undergo a proficiency determination on an annual basis.

2.0 PROCEDURE

2.1 The proficiency determination shall be conducted by a combination of the following:

A. Chief Public Defender; and
B. OPD Training Coordinator; and / or
C. Regional Deputy Public Defender from the region within which the contract attorney renders contract services; and / or
D. OPD Contracts Manager.

2.2 In making the proficiency determination, OPD will observe the contract attorney in court and may, in the discretion of the Chief Public Defender, obtain information from any of the following:

A. Clients;
B. The Regional Deputy Public Defender from the region within which the contract attorney renders contract services;
C. Judges and other court personnel;
D. Faculty from any training programs which the contract attorney attends during the preceding contract year.

2.3 OPD shall meet with the contract attorney once a year as part of the annual proficiency determination

2.4 As a condition of performing any contract services for OPD, the contract attorney shall complete and submit the OPD "Experience Survey." OPD shall maintain the completed "Experience Survey" on file and shall ensure that said "Survey" is updated annually.

3.0 PROFICIENCY DETERMINATION

3.1 Upon completion of the annual proficiency determination, OPD shall certify the contract attorney's proficiency within any area of public defense law in Montana unless OPD determines, following the annual proficiency determination, that the contract attorney is not proficient.

3.2 If OPD certifies proficiency, the contract attorney shall sign the proficiency certification form. Once the Chief Public Defender and the contract attomey have signed the proficiency evaluation, a copy will be provided to the contract attorney.

3.3 If OPD determines, following the proficiency determination, that the contract attorney is not proficient:

A. OPD shall immediately inform the contract attorney of its determination;
B. OPD shall recommend remedial training or other steps aimed at permitting the contract attorney to regain proficiency;
C. The contract attorney may request a meeting with the Chief Public Defender and may also submit a written objection.

4.0 RECORDS

Originals of all records generated in the course of the proficiency determination process will be placed in the contract attorney's OPD file and maintained throughout the duration of time that the contract attorney is rendering professional services for the OPD, and then for as long as is required by state retention of records policy.

5.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Standards Compliance**	Policy No.: **136**
Title:	Pages: **1**
Section:	Last Review Date:
Effective Date: **7-15-10**	Revision Date:

1.0 POLICY

The Office of the State Public Defender is committed to ensuring that all public defenders, whether state-employed or independent contract attorney, comply with the *Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act* (hereinafter referred to as "Standards.")

2.0 PROCEDURE

2.1 The Regional Deputy Public Defender is responsible for day to day monitoring of each attorney's compliance with the Standards.

2.2 The Training Officer or his/her designee will conduct random compliance checks as follows:

2.2.1 The Training Officer will call or visit with not less than 10 public defenders per month on a random basis.

2.2.2 Prior to contacting the public defender, the Training Officer will select three of the attorney's recently closed cases for discussion and review of compliance with the Standards.

2.2.3 If the public defender is not in compliance, the Training Office will discuss the failing with the public defender. The Training Officer will also identify training issues and develop a training plan for the region, to be shared with the Regional Deputy Public Defender and the Chief Public Defender.

2.2.4 The Training Officer shall keep a record of each contact made and the results of the compliance review.

2.3 The Chief Appellate Defender shall be responsible for alerting the Training Officer if any appellate attorney notes non-compliance with the Standards during review of a transcript.

3.0 CLOSING

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject:	**Witness Fees**	Policy No.:	**140**
Title	**26**	Pages:	**4**
Section:	**2-501 through 2-503**	Last Review Date:	**8-19-09**
Effective Date:	**2-20-09**	Revision Date:	**8-24-09**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) will pay witnesses a fee of $10 per day plus mileage as required by state law.

1.2 OPD will also pay other expenses incurred by witnesses, including lodging, commercial transportation and per diem, in accordance with State of Montana travel policy.

1.3 This policy applies to witnesses that testify voluntarily at the request of OPD, and to witnesses that appear to testify because they were issued a subpoena by OPD.

2.0 PROCEDURES

2.1 A witness is entitled to $10 per day plus mileage at the current state rate.

2.2 The witness must complete the Witness Fee and Travel Information form (Attachment A) for payment to be processed.

2.3 The Witness Fee and Travel Information form, along with a completed W-9 form (Attachment B), the subpoena if applicable, and receipts for any additional expenses are to be mailed to the OPD Central Office.

2.4 The office manager is responsible for providing the required forms to each witness testifying at the request of an OPD office, and for verifying the witness's appearance in court.

2.5 Contract attorneys are responsible for providing the required forms to each witness testifying at the request of their office, and for verifying the witness's appearance in court.

3.0 CLOSING

This policy shall be followed unless it conflicts with specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park, Butte, MT 59701
Phone: 406-496-6080

4.0 Cross-Reference Guide

MCA 26-2-501, et seq.
MOM 1-0300, Travel Policy

ATTACHMENT A

OFFICE OF THE STATE PUBLIC DEFENDER
44 West Park Street • Butte, Montana 59701
406.496.6080

Witness Fee and Travel Information

If you have appeared to testify at the request of the Office of the State Public Defender, the following information is needed to process your $10/day witness fee and travel claim.

- Please complete this form and the attached W-9 immediately after attending the court proceeding at which you testified. **Please print legibly.**
- Attach your subpoena unless you testified voluntarily.
- Attach *original* receipts for expenses purchased *by you* (motel room, airline or bus ticket, rental car, airport parking, etc.)
- Meal receipts are not required; however, if you are claiming meals, you *must* include departure/return times. You will be reimbursed at the prevailing state rate, not at actual cost.
- Mail both forms and all attachments to:
  Office of the State Public Defender
  44 W. Park
  Butte MT 59701

NAME	MAILING ADDRESS
PHONE NUMBER	DATE(S) OF TESTIMONY (ATTACH SUBPOENA)
DATE OF DEPARTURE (MONTH/DAY/YEAR)	TIME OF DEPARTURE (A.M./P.M.)
DEPARTURE AND DESTINATION CITIES	
DATE OF RETURN (MONTH/DAY/YEAR)	TIME OF RETURN (A.M./P.M.)

MODE OF TRAVEL

- ❑ Private Car (total number of miles) _____
- ❑ Commercial Transportation (attach receipt) _____
- ❑ Other (please explain) _____

_____

_____

❑ MEALS: Please indicate by date which meals you would like to be reimbursed for (B) Breakfast, (L) Lunch, (D) Dinner,

_____

_____

You must indicate departure/return times above so it can be determined whether you are eligible for meal reimbursement.

SIGNATURE (please sign in ink)	DATE

State of Montana
Department of Administration
SW9 (4/2009)

State Accounting Division
PO Box 200102
125 North Roberts Street
Mitchell Bldg – Room 255
Helena, MT 59620
Phone: 406-444-3092
Send faxes to: 406-444-2812

Substitute **W-9**

DO NOT send to IRS

Taxpayer Identification Number (TIN) Verification

Print or Type
Please see attachment or reverse for complete instructions.

Legal Name
(as entered with IRS) If Sole Proprietorship, enter your Last, First, MI

Trade Name
If doing business as (DBA) or enter business name of Sole Proprietorship

Primary Address (for 1099 form)
PO Box or Number and Street, City, State, ZIP + 4

Remit Address (where payment should be mailed, if different from Primary Address) PO Box or Number and Street, City, State, ZIP + 4

Entity Designation (check only one type)

- ☐ Corporation
  - ☐ S-Corp ☐ C-Corp
  - Do you provide medical services?
  - ☐ Yes ☐ No
- ☐ Individual
- ☐ Sole Proprietorship
- ☐ Partnership
  - ☐ General ☐ Limited
  - ☐ LLC (for federal tax purposes taxed as)
    - ☐ S-Corp ☐ C-Corp
- ☐ Estate/Trust
- ☐ Other Groups of Individuals
- ☐ Organization Exempt from Tax (under Section 501 (a)(b)(c)(d)(e))
- ☐ Government Entity

Exempt from Backup Withholding

☐ Yes ☐ No

Taxpayer Identification Number (TIN) (Provide Only One) (If sole proprietorship provide FEIN, if applicable)

Social Security Number	Federal Employer Identification No

Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number, AND
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.
3. I am a U.S. person (including a US resident alien).

Printed Name	Printed Title	Telephone Number

Signature	Date

Optional Direct Deposit Information (used at agency discretion) (all fields required to receive electronic payments)
(Must Include a Voided Check, No Direct Deposit Slips Accepted)

Your Bank Account Number	☐ Checking ☐ Savings	Name on Bank Account	Bank Routing No. (ABA)

THIS IS A:

☐ New Direct Deposit ☐ Change of Existing ☐ Additional Direct Deposit ☐ Email Change Only

Email Address (Please make this LEGIBLE)

If you provide bank information and an email address, we will send a message notifying you when an electronic payment is issued. We will NOT share your email address with anyone or use it for any other purpose than communicating information about your electronic payments to you. **If you have questions about completing this form, please call the Warrant Writer Unit at 406-444-3092.**

SW9 (4/2009)

Instructions for Completing Taxpayer Identification Number Verification (Substitute W-9)

Legal Name As entered with IRS

Individuals: Enter Last Name, First Name, MI
Sole Proprietorships: Enter Last Name, First Name, MI
LLC Single Owner: Enter owner's Last Name, First Name, MI
All Others: Enter Legal Name of Business

Trade Name

Individuals: Leave Blank
Sole Proprietorships: Enter Business Name
LLC Single Owner: Enter LLC Business Name
All Others: Complete only if doing business as a D/B/A

Primary Address

Address where 1099 should be mailed.

Remit Address

Address where payment should be mailed. Complete only if different from primary address.

Entity Designation

Check *ONE* box which describes the type of business entity

Taxpayer Identification Number

LIST ONLY ONE: Social Security Number OR Employer Identification Number. ***See "What Name and Number to Give the Requester" at right.***

If you do not have a TIN, apply for one immediately. Individuals use federal form SS-05 which can be obtained from the Social Security Administration. Businesses and all other entities use federal form SS-04 which can be obtained from the Internal Revenue Service.

Certification

You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to furnish your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

What Name and Number to Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual no the account [1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor [2]
4. a The usual revocable savings trust (grantor is also trustee)	The grantor-trustee [1]
b So-called trust account that is not a legal or valid trust under state law	The actual owner [1]
5. Sole proprietorship or Single-Owner LLC	The owner [3]
For this type of account:	**Give name and EIN of:**
6 Sole Proprietorship or Single-Owner LLC	The owner [3]
7 A valid trust, estate, or pension trust	Legal entity [4]
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9 Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10 Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district or prison) that receives agricultural program payments	The public entity

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished
[2] Circle the minor's name and furnish the minor's SSN
[3] **You must show your individual name**, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one)
[4] List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

NOTE: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed

Office of the State Public Defender
Administrative Policies

Subject: **Major Crimes Unit**	Policy No.: **150**
Title	Pages: **4**
Section:	Last Review Date:
Effective Date: **11/02/09**	Revision Date:

1.0 POLICY

The Office of the State Public Defender (OPD) recognizes the need and benefit of creating an employee unit capable of handling complex and high profile cases. A Major Crimes Unit has been established, consisting of attorneys and support staff in numbers as designated by the Chief Public Defender. One of the attorneys will be designated Supervisor of the unit.

2.0 PURPOSE

The purpose of the Major Crimes Unit (MCU) is to:

2.1 Create a unit of attorneys and support staff capable of independently trying complex cases, up to and including death penalty cases;

2.2 Significantly reduce reliance on Regional Deputy Public Defenders and other top management in defending major crimes;

2.3 Reduce workload strain in the regions caused by defending time-intensive major crimes;

2.4 Handle difficult cases in remote areas of the state cost-effectively; and

2.5 Train less-experienced attorneys on criminal defense in complex cases statewide.

2.6 It is not the intent or purpose of the MCU to remove the ability or opportunity to defend individuals accused of committing homicide from the attorneys in local offices.

3.0 MAJOR CRIME CASE ASSIGNMENT

3.1 The Regional Deputy Public Defender shall contact the MCU Supervisor within 24 hours of any homicide or attempted homicide. The Regional Deputy Public Defender and the Supervisor shall discuss the case so as to reach a decision as to assignment of counsel. The assignment options are:

3.1.1 Assign the case to the MCU attorneys;

3.1.2 Assign the case to an attorney in the MCU and an attorney in the local area; or

3.1.3 Leave the case with the region for assignment as the region sees fit.

3.2 If the case involves a law enforcement officer, or a prominent local political figure, the case shall be referred to the MCU and will not be handled by local counsel.

3.3 Other felony cases that possess a high probability to go to trial and which appear to have a high degree of complexity/difficulty may be referred to the MCU. The Supervisor shall review the request and determine whether to accept the case.

3.3.1 In making a decision, the Supervisor shall consider the case load of the unit, the complexity of the case, and whether contract counsel would have to be used to handle the case if the unit declines the referral.

3.3.2 It is anticipated that the MCU will be more actively involved in cases in areas that rely on contract attorneys.

3.4 In the event of a complicated case with multiple defendants, death penalty issues, law enforcement, political figures, or other case load/complexity concerns, the Supervisor may request that OPD's most experienced attorneys, up to and including the Chief Public Defender, be assigned as counsel.

3.5 The Regional Deputy Public Defender and the Supervisor shall take into account the following factors in discussing the case assignment:

3.5.1 The complexity of the case;

3.5.2 The assessment, if possible with initial information, as to whether the case will go to trial;

3.5.3 The work load of the MCU;

3.5.4 The work load of the local attorneys;

3.5.5 The qualifications of the available local attorneys;

3.5.6 That both experienced local counsel and attorneys in the MCU need to have the opportunity to represent defendants in homicide cases as lead counsel;

3.5.7 The ability of the MCU to provide training of lesser experienced attorneys by involving them as second chair attorneys in homicide cases;

3.5.8 Whether the case would have to be handled by contract counsel if the case is left with the region; and

3.5.9 Any other considerations specific to each case.

3.6 To assist the Regional Deputy Public Defender and the Supervisor in making the decision as to case assignments, the MCU will maintain a list of all homicide cases assigned state-wide to OPD attorneys including the names of the attorneys assigned to those cases. The MCU will also maintain a list of all attorneys qualified to handle homicide cases, including all attorneys listed as homicide attorneys under schedule B of the career pay ladder (as adopted by the state and the union), and any other attorneys whom a Regional Deputy Public Defender has recommended and the Chief Public Defender has certified as homicide attorneys.

4.0 PROCEDURE

Once the Regional Deputy Public Defender and the Supervisor reach an assignment decision, they shall follow the following process.

4.1 If the decision is to assign the case to the MCU, the Supervisor will designate the lead attorney.

4.1.1 The Supervisor may request that the Regional Deputy Public Defender assign a local attorney to work with the MCU for routine court appearances, routine contact with clients who are in jail, and so forth.

4.1.2 The MCU Case Referral form (Attachment A) will be completed by the regional office and submitted to the MCU within 24 hours.

4.2 If the decision is to assign the case to a combination of MCU and local attorneys, the Supervisor will immediately designate the lead attorney. The Regional Deputy Public Defender will designate the local attorney in consultation with the Supervisor.

4.2.1 The assignment decision is to be based on the experience of the local attorney, and is given to persons identified as progressing in felony trial work.

4.2.2 Case assignments will not be based on a rotation system just to provide experience in trial work (general experience shall be acquired with less complicated cases within local offices).

4.3 If the decision is to assign the case to the regional office, the Regional Deputy Public Defender will designate the lead attorney.

4.4 If the Regional Deputy Public Defender and the Supervisor cannot reach agreement as to how the case shall be assigned, the Supervisor will make the assignment decision.

4.5 All major crime case assignments are subject to final approval and/or assignment by the Chief Public Defender.

5.0 CONFLICTS OF INTEREST

The members of the MCU will take steps to identify possible conflicts of interest. Regional Deputy Public Defenders will also review initial case information to determine if any conflicts of interest may exist.

Information concerning any possible conflict of interest shall be immediately given to the Supervisor. The Supervisor shall, in consultation with management as needed, take the necessary steps to resolve the conflict.

6.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

Major Crime Unit Case Referral Form

This form is to be completed by the regional office and submitted to the Major Crime Unit within 24 hours of case assignment.

Client name: _____

Charges: _____

Court: _____

Bond/release status: _____

Next court date: _____

Is a local attorney available for, or already involved in, initial client contacts and initial court proceedings? _____

_____

_____

Referring Region: _____

_____

Signature of referring Regional Deputy Public Defender

Office of the State Public Defender
Administrative Policies

Subject: **Team Leader Attorneys**	Policy No.: **170**
Title:	Pages: **2**
Section:	Last Review Date: **6-01-10**
Effective Date: **5-10-10**	Revision Date: **6-28-10**

1.0 POLICY

The Office of the State Public Defender uses the team leader attorney model in some of its offices throughout the state. The responsibilities of the team leader attorney are defined as follows.

2.0 DEFINITION

In the team leader attorney model, an experienced public defender is designated by the Regional Deputy Public Defender (RDPD) as the team leader for teams doing comparable cases in an office. Example: an experienced felony public defender is designated team leader for those public defenders handling felony cases in that office.

3.0 PROCEDURE

3.1 Team Leader Attorney Responsibilities

3.1.1 To hold weekly meetings with the attorney team to discuss cases and case issues;

3.1.2 To routinely and individually meet with attorneys to monitor workloads;

3.1.3 To designate a second chair for trials, when necessary;

3.1.4 To provide mentoring as needed or as requested;

3.1.5 To monitor the attorney team's compliance with requirements to keep and enter time on cases;

3.1.6 To ensure that attorneys who are assigned to a case have the experience and skills to handle the case. If the attorney does not have the experience and skills, the lead attorney may still assign the case to the attorney if a sufficient mentoring plan is developed and used.

3.1.7 To assist the attorney team in recognizing conflict questions and presenting them to the RDPD;

3.1.8 To meet at least twice a month with the RDPD to advise him of work load, case, court or legal issues being addressed by the attorney team.

3.2 Additional Team Leader Attorney Responsibilities when the Regional Deputy Public Defender is Unavailable

3.2.1 To assign cases to team members;

3.2.2 To approve vacation and comp time accrued or used;

3.2.3 To provide guidance and direction to staff and investigators on work related to the team.

4.0 TRAINING

It will be the responsibility of the Regional Deputy Public Defender and the Training Officer to train the team leader attorney on successfully complying with this policy and their job responsibilities.

5.0 CLOSING

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Incentive Awards**	Policy No.: **180**
Title:	Pages: **6**
Section:	Last Review Date:
Effective Date: **8-5-10**	Revision Date:

1.0 POLICY

This policy establishes uniform guidelines for administering the employee incentive award program in the Office of the State Public Defender.

The incentive award program rewards documented outcomes and achievements approved by agency management for implementation.

2.0 PROCEDURE

2.1 Summary

2.1.1 An idea, innovation, suggestion, or prototype is submitted to management.

2.1.2 Management approves the idea, suggestion, innovation, or prototype for implementation after determining it will result in cost savings or improvements to agency operations.

2.1.3 The new idea, suggestion, innovation, or prototype realizes:

2.1.3.1 improved effectiveness or improved services without increasing the cost of operations,

2.1.3.2 measureable cost savings, and/or

2.1.3.3 achievements or outcomes eliminating or reducing the agency's expenditures.

2.1.4 The employee, group or team of employees, or non-employee is nominated for an incentive award.

2.1.5 The Chief Public Defender or designee grants the incentive award and determines its monetary value.

2.2 Eligibility

An employee, a group or team of employees, or a non-employee may receive an incentive award. They do not need to be employed by the agency benefiting from the achievement or outcome or granting the incentive award.

2.3 Nomination Submissions

2.3.1 After the idea, suggestion, or prototype has been approved and implemented by management, incentive award nominations may be submitted.

2.3.2 Nominations may come from current agency employees, employees of other state agencies and from non-employees.

2.3.3 Nominations for incentive awards are public information and available for review upon request. Requests should be directed to the Central Office, Human Resource Officer or by calling 406-496-6080.

2.3.4 Nominations for incentive awards may be submitted on the incentive award nomination form (Attachment A) or in another written format. Nomination forms are available on the OPD website or from the Office of the State Public Defender Central Office, 44 W. Park, Butte, Montana 59701.

2.3.5 The nomination must include:

2.3.5.1 Name, address, email, and telephone number of person(s) submitting the nomination for an incentive award.

2.3.5.2 Name(s) of individual or group or team of employees nominated, if applicable.

2.3.5.3 The date submitted.

2.3.5.4 A description of how the outcome, achievement or savings exceeds normal expectations for the employee, or group or team of employees, or has an impact on the delivery of service to the public or other customer.

2.3.5.5 The dollar value of the documented savings, including the method used to determine the value.

2.3.6 Submit nominations to the Central Office, attention Human Resource Officer, 44 W. Park, Butte, Montana 59701.

2.4 Incentive Award Committee

2.4.1 The incentive award committee is made up of three employees appointed by the Chief Public Defender.

2.4.2 The Chief Public Defender will appoint an incentive award program coordinator. This person serves as the chairperson of the incentive award committee. Other responsibilities include tracking nominations, promoting the program, notifying submitters of the status of proposals, arranging presentation ceremonies, obtaining monetary awards, publicizing awards to the agency and media, and preparing the annual award report listing the type and amount of awards the agency presented.

2.5 Nomination Review Process

2.5.1 The committee completes the initial evaluation of the nominations for incentive awards, reviewing each nomination received and

making the following non-binding recommendations to the Chief Public Defender:

2.5.1.1 Approval or disapproval of a nomination for an award, and

2.5.1.2 An appropriate value for a monetary or leave award.

2.5.2 The Chief Public Defender makes the final decision to grant incentive awards, and resolves any and all disputes related to granting incentive awards. If the award is to be divided between two or more people, the Chief Public Defender determines the amount each person is to receive.

2.6 Evaluation Criteria

The incentive award committee uses the following criteria to evaluate and prioritize the award nominations:

2.6.1 Evaluate the impact of the outcome, accomplishment or savings on delivery of services to the public or other customers.

2.6.2 Evaluate the outcome, accomplishment or savings in terms of how directly and to what degree they contribute to the agency's objectives, goals and mission.

2.6.3 Compare the outcome, accomplishment, or savings to what is normally expected from the employee, or group or team of employees, through the duties and responsibilities of their positions.

2.6.4 Determine if cost savings or cost avoidance results from activities that are highly original or creative involving innovative or novel approaches developed by the employee or by members of the group or team.

2.6.5 Determine if the results significantly exceed the level of effort or diligence normally expected from the employee's position(s).

2.6.6 Determine if the results required cooperative work efforts possible only through initiatives of group or team members that go above and beyond what is normally expected through existing work structure or organization.

2.7 Presentation of Awards

2.7.1 Once awards are approved by the Chief Public Defender, the incentive award program coordinator will process the awards and coordinate the presentation ceremony.

2.7.2 Incentive awards will be presented at least annually.

3.0 CROSS REFERENCE

Employee Incentive Program, Section 2-18-1101-1103, 1105-1107, MCA
Incentive Award Program, Section 2.21.6701-6703, 6708-6709 ARM

4.0 CLOSING

The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who wish to participate in the Incentive Award Program. To request an accommodation, or for questions about this policy, contact OPD at the following address:

Office of the State Public Defender
Human Resource Officer
44 West Park
Butte, MT 59701
Phone 406-496-6080

Attachment A

INCENTIVE AWARD NOMINATION FORM

Office of the State Public Defender

The nomination must include the following information. Incomplete submissions will be returned. Questions about this process should be direct the Human Resource Officer at 496-6080 or DOAOPDHRPayroll@mt.gov.

Please type or print clearly.

The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who wish to participate in the Incentive Award Program. To request an accommodation, contact the Human Resource Officer at 44 W. Park, Butte MT 59701, 496-6080, or fax 496-6098.

All nominations for incentive awards are public information and available for review.

Employee, Group or Team Nominated		
Name(s) of Person(s) Nominated	Location	Telephone Number(s)

Description of outcome, achievement or savings
Attach additional sheets if necessary. Describe the outcome, achievement or savings and how it
1. Exceeds normal expectations for the employee, or group or team of employees, or 2. Has an impact on the delivery of service to the public or other customer, or 3. Directly and to what degree contributes to the agency's objectives, goals and mission.

Documented Savings
1. Dollar value of the documented savings: $ _____ 2. Describe in detail the method used to determine the value:

Signature(s)	
Signature of the submitter(s) _____	Date: _____
Address: _____	Phone number: _____
Signature of the submitter(s) _____	Date: _____
Address: _____	Phone number: _____

For Agency Use	
Received by: _____	Date: _____

Office of the State Public Defender
Administrative Policies

Subject:	**Accounting Reports**	Policy No.:	**205**
Title:	**47**	Pages:	**1**
Section:	**1-202(6)**	Last Review Date:	**6-23-09**
Effective Date:	**7/1/06**	Revision Date:	**6-23-09**

1.0 POLICY

1.1 The Office of the State Public Defender will produce the following monthly reports and provide them to the Chief Public Defender, Administrative Director, Department managers and Regional Deputy Public Defenders (RDPDs):

1.1.1 Monthly Budget Variance Report

1.1.2 Contractor Expenditure Report

1.1.3 Monthly Organization Detail Report

1.1.4 Contract Attorney by Month of Service Report

2.0 PROCEDURE

2.1 The accounting department will produce and distribute these reports monthly.

2.2 Department managers and RDPDs will review the monthly reports and report any errors or omissions to the accounting department.

2.3 The Administrative Director will monitor the monthly reports and compare the reports to individual budgets.

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Caseload Data Collection**	Policy No.: **210**
Title: **47**	Pages: **2**
Section: **1-202(5)**	Last Review Date: **12-01-09**
Effective Date: **6-20-07**	Revision Date: **12-01-09**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) will use information technology and caseload management systems to ensure that detailed expenditure and caseload data is accurately collected, recorded, and reported.

2.0 DEFINITIONS

2.1 "Case ID Number" is the Office of the State Public Defender case number.

2.2 "State Public Defender" is an attorney hired by OPD as a state employee to provide public defender services.

2.3 "Contract Attorney" is an attorney providing public defender services on behalf of OPD as an independent contractor.

2.4 "Case Management System" is an automated system that holds and reports on case information.

3.0 PROCEDURE

3.1 Collection & Recording

3.1.1 Upon receipt of a notice of appointment of OPD to represent a client in need of public defender services, the Regional Deputy Public Defender (RDPD) determines whether the case will be assigned to a contract attorney or to a state public defender.

3.1.2 All case information, for cases assigned to contract attorneys or to state public defenders, is entered into the case management system and a case ID number is attached as an identifier to that case.

3.1.3 Mandatory information entered into the JustWare case management system includes:

- **3.1.3.1** Specific court
- **3.1.3.2** Specific county
- **3.1.3.3** Violation type
- **3.1.3.4** Court docket number
- **3.1.3.5** Date of appointment
- **3.1.3.6** Attorney assignment
- **3.1.3.7** Basic client information
- **3.1.3.8** Specific charges by statute
- **3.1.3.9** Charging history
- **3.1.3.10** Involved parties to the violation

3.1.3.11 All calendared events
3.1.3.12 Judgment & sentencing details
3.1.3.13 Any other information deemed useful by OPD

3.2 Case Count Detail Reporting

Case counts shall be reported by region, by court, and by case type.

3.3 Detailed Expenditure Data

Existing or future technology shall provide detailed expenditure information. OPD currently uses the Statewide Accounting, Budgeting and Human Resource System (SABHRS) to record all accounts payable, accounts receivable, general ledger and human resource transactions.

3.3.1 Accounts Payable

All cases are assigned a case ID number, and all direct payments associated with a particular case (i.e., contract attorney costs, other professional fees, photocopy charges, travel costs, etc.) are processed through SABHRS using the case ID number.

3.3.2 Payroll Expenditures

Each state public defender is responsible for daily time keeping. All time is to be maintained in JustWare Timekeeping. The state public defender identifies time worked by case ID number. This information is necessary to produce detailed expenditure reporting.

4.0 CLOSING

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **JustWare Case Management Program**	Policy No.: **215**
Title: **47**	Number of Pages: **4**
Section: **1-202 (5)**	Last Review Date: 6-10-10
Effective Date: **10-1-09**	Revision Date: **9-30-10**

1.0 POLICY

JustWare is the agency's core application to collect and report data and assist in the representation of indigent Montanans. All employees of the agency shall use JustWare as required by their job responsibilities.

2.0 PURPOSE

2.1 As an agency of the State of Montana, the Office of the State Public Defender (OPD) is accountable to the legislature for the funds it receives. To receive adequate funding, the agency needs to be able to accurately report data to the legislature.

2.2 The ability of the agency to represent indigent Montanans requires that attorneys, staff and investigators accurately keep and record information about individual cases.

2.3 Indigent Montanans are required to pay costs of assigned counsel per 46-8-113 MCA. Those costs must be limited to the costs incurred by OPD, so the agency must be able to track and assign individual costs to individual cases.

3.0 PROCEDURE

3.1 INITIAL CASE INFORMATION

Regional Deputy Public Defenders (RDPDs) shall ensure that cases are assigned and opened in a timely manner. RDPDs will be responsible for reviewing their regional reports to assure that data has been input in a uniform manner pursuant to OPD Policy 210, Caseload Data Collection.

3.2 DISPOSITIONAL INFORMATION

RDPDs shall ensure that dispositional information is entered into JustWare in a timely manner after the conclusion of a case.

3.3 TIME TRACKING

3.3.1 Attorneys shall keep daily track of time, in increments of one tenth of an hour, on all cases for all courts. Pending time shall be submitted on a weekly basis.

3.4.3 Employee's job requires travel and availability via cellular device

4. REQUIREMENTS FOR USING A STATE DEVICE

4.1 Personal use of state devices shall be limited to State business and essential personal calls.

4.2. State device numbers may be ported (transferred) from one vendor to another. The following types of number porting are prohibited:

4.2.1 Porting of a state landline business number to any cellular device (state or private device)

4.2.2 Porting of a private device number to a state device account

4.2.3 Porting of a State device number to a private device account

4.3. User responsibilities specified in policy ENT-SEC-081 User Responsibility and ENT-SEC-041 Transmission Privacy apply in so far as a cellular device under this policy provides a capability listed in those policies.

4.4 Users of mobile devices that interact with the State of Montana's Microsoft Exchange mobile device connection interface will be required to sign a Managed Mobile Device Email User Agreement (Attachment B).

5. REQUIREMENTS FOR REIMBURSEMENT OF PRIVATE DEVICE COSTS

If a private device is used for business purposes a reimbursement request may be made (Attachment C):

5.1 Any reimbursement shall be for verifiable costs in excess of the employee's plan or other fees and taxes incurred as a direct result of the business use.

5.2 Fixed Monthly Rate Option: The agency may reimburse employees approved to use a private device for state business at a fixed monthly rate:

5.2.1 This reimbursement is available to those employees who are required to maintain a private device:

5.2.1.1 for the performance of their job duties and have not been issued a State device, or

5.2.1.2 because their agency has determined it either is more efficient or is essential for the performance of their job duties.

5.2.2 The fixed monthly rate shall be no higher than a current State contract plan that would have otherwise been selected based on the number of minutes appropriate for the employees job-related duties.

5.2.3 Employees who receive a monthly fixed reimbursement shall be responsible for all state, local and federal taxes.

5.2.4 Employees who are issued a State device are not eligible to be reimbursed at a fixed monthly rate.

State business, in a safe and prudent manner while using cellular devices. State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business. (ARM, 2.6.210 CELL PHONE USE).

6.4.4 May request approval to use their private device for State business if they are required to carry a State device. The employee's supervisor may grant or deny such requests.

6.4.5 Shall check the monthly statement for accurate billing, highlighting calls of a personal nature.

6.4.6 Shall reimburse the State for all personal calls that result in additional charges to the State

6.4.7 Shall return State devices to their supervisor when the employee leaves their position or is no longer an authorized cellular device user.

7. ENFORCEMENT

Enforcement actions for violations of this policy include but are not limited to revocation of cellular device privileges and/or possible disciplinary action up to and including termination.

8. CROSS REFERENCE GUIDE

8.1 Policy for Establishing and Implementing Statewide Information Technology Policies and Standards (pending)

8.2 ENT-SEC-081, User Responsibilities

8.3 ENT-SEC-041, Transmission Privacy

8.4 ARM, 2.6.210, Cell Phone Use

8.5 ARM, 2.13.102, Use of the State's Telecommunications Systems

8.6 1-1103.01, MOM, Use of the State Telephone System (not available online)

9. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to the OPD Central Office at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6080

User Name:
User ID (CM#):
Phone #:

Attachment B

Office of the State Public Defender

Managed Mobile Device Email User Agreement

This user agreement covers ONLY the use of a Managed Mobile Device that interacts with the State of Montana's Microsoft Exchange mobile device connection interface.

For a definition of a managed mobile device or to find out more information about the E-MAIL MOBILE service, go to the Service Catalog located on the MINE Portal.

The user acknowledges and agrees:

1. The Department of Administration, Information Technology Services Division (ITSD), may wipe my managed mobile device, **STATE OR PERSONAL**, without any notification, resulting in loss of all data on the managed mobile device and setting the managed mobile device back to factory default settings. ITSD will make a reasonable effort to contact the appropriate agency personnel to inform them of the managed mobile device wipe, and reasons for the wipe, in a timely manner. Some of the common reasons to wipe a managed mobile device are listed below:
   a. If the managed mobile device is suspected of being compromised and poses a threat to the State.
   b. If the user of the managed mobile device violates State policies and statutes concerning the use of the mobile device.
   c. If a technical issue arises that requires the managed mobile device to be wiped to resolve.
   d. If the mailbox associated with the managed mobile device is disabled.
   e. If the owner of the managed mobile device resigns, is terminated or suspended with/without pay.

2. During the initial synchronization with the Exchange infrastructure, a default Exchange Security Configuration (ESC) will be pushed to my managed mobile device. For information regarding the ESC read the "Managed Mobile Device Email Security Configuration" document. This ESC is meant to protect and secure the State's information on my managed mobile device. This ESC may change the way my managed mobile device works when I connect it to the Exchange infrastructure and could disable or enable features on my managed mobile device. If I require features that were changed by the ESC, then I may apply for the UNMANAGED Mobile Device policy through my agency or not use the E-MAIL MOBILE service.

3. The ESC may change because it is periodically reviewed. ITSD will attempt to inform customers before any changes, but in the case of an emergency change, this contact may not be possible.

4. If I lose my managed mobile device that is configured to connect to the State of Montana's Exchange Infrastructure, I am required to take the actions listed below as soon as possible, but no later than 24 hours from losing my managed mobile device.
   a. Contact my Security Officer and report the loss.
   b. Wipe all data from the managed mobile device via the Outlook Web Access *Options* page. http://mine.mt.gov/it/pro/win2kadmin/exchange/managingmobiledevicethroughowa.mcpx

c. Contact the cellular company that provides my service and have the managed mobile device deactivated.

d. Change my Active Directory password.

e. Open an incident with ITSD's Service Desk, either via email to ServiceDesk@mt.gov or by calling 444-2000 to notify ITSD's Exchange Infrastructure Administrators of the loss and what actions have been taken. After being notified of a lost managed mobile device, the Exchange Infrastructure Administrators will confirm the data wipe of the managed mobile device.

5. DOA ITSD's responsibility is limited to verification that the mobile device connection interface is up and available and that a DOA ITSD test mobile device can use the mobile device connection interface. DOA ITSD WILL NOT provide troubleshooting or support for managed mobile devices.

6. Support of the managed mobile device is provided by the mobile device provider or other agency designated staff.

7. My use of managed mobile device is also governed by the following polices and laws, Electronic Mail ENT-Net-042; User Responsibility ENT-SEC-081; Internet Acceptable Use ENT-INT-011; and 2-1S-114 and 2-17-S34, MCA.

8. All network activity conducted while doing State business and being conducted with State resources is the property of the State of Montana; and, the State reserves the right to monitor and log all network activity including email, text messages, Twitter messages, Internet use, and all other social media, with or without notice. Therefore, I have no expectations of privacy in the use of these resources and the content of the messages sent using these resources.

By signing this agreement, I acknowledge that I have been made aware of and understand the appropriate uses of managed mobile devices with the State of Montana Exchange infrastructure and I have reviewed the MANAGED MOBILE DEVICE EMAIL SECURITY CONFIGURATION document associated with this service. I also acknowledge that I have read and understand the policies and laws referenced in this agreement and agree to comply with these policies and laws.

MANAGED MOBILE EMAIL USER

Signature: _____ Date: _____ (DD/MM/YYYY)

Print Name: _____

AGENCY SECURITY OFFICER

Signature: _____ Date: _____ (DD/MM/YYYY)

Print Name: _____

The information above may not be altered in any way. This space may be used for approval information including plan and equipment details.

_____

_____

_____

Mail the signed original of this form to: OPD Central Office, 44 W. Park, Butte MT 59701.

Office of the State Public Defender

Personal Cellular Device Fixed Monthly Reimbursement Request Form

Use this form to request a fixed monthly reimbursement for use of a personal cellular device for State of Montana business. See section 5.2 of the Office of the State Public Defender (OPD) Cellular Devices and Services policy for eligibility, restrictions and more information.

INSTRUCTIONS: Complete parts 1 thru 4 and submit to the Central Office for approval and processing.

PART 1 – WHO - COMPLETE THE FOLLOWING FOR THE EMPLOYEE REQUESTING A MONTHLY REIMBURSEMENT:

NAME:_____

TITLE:_____

OFFICE LOCATION/ORG_____

EMPLOYEE ID:_____

EMPLOYEE CELL PHONE NUMBER:_____

PART 2 – JUSTIFICATION - WRITE A BRIEF JUSTIFICATION FOR THE REIMBURSEMENT REQUESTED AND ATTACH SUPPORTING DOCUMENTATION, INCLUDING A COPY OF YOUR PHONE BILL. **YOU MUST DEMONSTRATE THAT USE OF YOUR PERSONAL DEVICE FOR STATE BUSINESS INCREASES YOUR PLAN COST.**

PART 3 – AMOUNT - COMPLETE THE FOLLOWING TO DETERMINE THE REIMBURSEMENT AMOUNT:

The amount of the reimbursement can be no more than the amount the state would otherwise pay to provide the service.

ESTIMATED MONTHLY AVERAGE VOICE USAGE FOR STATE BUSINESS:_____MINUTES

Use of your cell phone for state business will be reimbursed at $15 per month.

Requests for reimbursement for data use will be addressed on a case by case basis, and if approved will be reimbursed at $40 per month.

MONTHLY REIMBURSEMENT AMOUNT REQUESTED:_____

PART 4 – EMPLOYEE/SUPERVISOR AUTHORIZATION:

YOUR SIGNATURE BELOW AFFIRMS YOU HAVE READ AND UNDERSTAND THE OPD CELLULAR DEVICES AND SERVICES POLICY. Your qualifications for this reimbursement may be reviewed at any time. **This fixed monthly reimbursement shall expire no later than one year** from the date of approval of this request by the Central Office.

I am aware that maintaining a personal cellular account and device are my responsibility and necessary as part of my job responsibilities. My personal cell phone number may be listed or published as needed for job requirements and my cell phone records must be furnished to the State upon request.

Requesting Employee Signature: _____

Date: _____

Supervisor Signature: _____

Date: _____

PART 5 – CENTRAL OFFICE APPROVAL AND PROCESSING:

Chief Public Defender Approval Signature: _____

Date: _____

OPD Cellular Manager Signature (For Tracking and Processing):_____

Date: _____

OPD CELLULAR MANAGER SHALL RETAIN ORIGINAL FOR VERIFICATION AND RETURN AN ELECTRONIC COPY TO THE EMPLOYEE

Office of the State Public Defender
Administrative Policies

Subject: **Media Policy**	Policy No.: **230**
Title	Pages: **2**
Section:	Last Review Date:
Effective Date: **04/23/09**	Revision Date:

1.0 POLICY

The purpose of this policy is to establish guidelines for the Office of the State Public Defender's (OPD or the agency) response to media inquiries.

The agency will:

- Respond to media inquiries in a timely, appropriate, and professional manner;
- Give all members of the media equal access to public information;
- Do its best to ensure that all information is accurate and up-to-date;
- Uphold the constitutional right of all Montanans to know what their government is doing on their behalf; and
- Take into account the constitutional right of individuals to privacy, and state and federal laws that mandate confidentiality in specific situations.

Any employee who has questions about whether specific information is public or private should contact the Administrative Director at 496-6080.

2.0 PROCEDURES/REQUIREMENTS

2.1 Media Inquiries

The Chief Public Defender, Administrative Director and Regional Deputy Public Defenders may give interviews to or respond to media requests for information. They may delegate this responsibility to other employees on specific projects, issues or topics as appropriate.

Employees should refer media inquiries to their supervisor, Regional Deputy Public Defender, Administrative Director or the Chief Public Defender. If the employee is unable to reach any of these individuals, the employee should provide the requested information to the media representative or refer them to the best source of the information. All questions concerning OPD policy should be forwarded to the Central Office prior to responding.

Anyone who responds to a media inquiry should notify their supervisor, Regional Deputy Public Defender, Administrative Director **and** the Chief Public Defender by e-mail. The e-mail should include:

- The reporter's name, affiliation, and phone number;
- The date/time of the contact;
- The topic of the reporter's call; and
- A brief synopsis of the employee's response.

2.2 News Releases and Press Conferences

All news releases and press conferences must be approved by the Administrative Director or the Chief Public Defender prior to release or scheduling.

2.3 Publications

State agencies are required by law to send a minimum of one electronic copy and up to 17 paper copies of all publications to the State Library Publications Center Coordinator.

All agency publications must include:

- Cost disclosure information as required in Section 18-7-306, MCA (provided by the Department of Administration Print and Mail Services office);
- An accessibility statement: "Alternative accessible formats of this publication will be provided by request. For further information call xxx-xxxx or TTY 711."

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender, Administrative Services Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

4.0 CROSS-REFERENCE GUIDE

Montana Constitution Article II, Sections 9 (right to know) & 10 (privacy)
2-6-101, MCA et seq. Public Records

subject to emergency response, on-call, or other off-shift duty associated with state employment;

(e) a state employee required to stay overnight at a location other than the employee's established work location during nonwork time to drive to a cultural, recreational, or leisure activity or to conduct other personal business, if the activity is within 30 miles of the employee's lodging;

(f) a non-state employee enrolled and registered as a student at a university of the state to conduct university business;

(g) a non-state employee to aid or assist a disabled state employee if the aide has completed the risk management and tort defense division's (RMTD) vehicle use agreement and obtained authorization from the agency head or designee prior to the use;

(h) a non-state employee to assist a state employee or other individual during a medical emergency for transportation and related purposes. Prior approval is not required;

(i) a non-state employee who is an independent contractor or an employee of a temporary employment agency contracting with the state with prior approval from the agency head when a state employee is not available to operate the vehicle. The contractor must complete the RMTD's vehicle use agreement. The agreement must be signed by the agency head and presented to the motor pool or affected state agency prior to the use; and

(j) a non-state employee accompanying a state employee on official state business where the state employee becomes ill, fatigued, or is otherwise rendered physically or mentally incapable of driving and/or a compelling state interest is served by allowing the non-state employee to drive. Prior approval is not required.

(2) Any exception to the authorized drivers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.204 AUTHORIZED PASSENGERS AND USES

(1) Except as otherwise provided in this rule, the following individuals may ride as passengers in a state vehicle:

(a) a state employee conducting business on behalf of the state; or

(b) a non-state employee who is:

(i) an independent contractor conducting business on behalf of the state;

(ii) an aide rendering assistance to a disabled state employee;

(iii) a guest or client of the state, including a public employee, if conducting, participating in, or providing a benefit to the conduct of state business;

(iv) rendering assistance during an emergency situation; or

(v) a nursing infant if the parent is an authorized driver or passenger.

(2) Any exception to the authorized passengers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.205 DRIVER REQUIREMENTS

(1) Non-probationary employees required to drive as part of their job who have accumulated 12 or more conviction points according to the schedule specified in 61-11-203, MCA, over the most recent 36 months may not drive a state vehicle or personal vehicle for state business until having successfully completed a certified safe driver course approved by the RMTD and received authorization to drive from their agency head and RMTD. State employee drivers who have accumulated 15 or more conviction points according to the schedule specified in 61-11-203, MCA, may not drive a state vehicle or a personal vehicle for state business until the accumulated point total is less than 12 within the past 36 months.

(2) Non-probationary employees who have accumulated 18 or more points in the immediately preceding 36 months may not drive a state vehicle or a personal vehicle for state business until two years have passed during which they have not accumulated any conviction points according to the schedule specified in 61-11-203, MCA, have successfully completed a certified safe driver course approved by RMTD, and received authorization to drive from their agency head and RMTD.

(3) A state employee required to drive as part of the employee's job shall report any single driving infraction of five or more conviction points according to the schedule in 61-11-203, MCA, accumulated while driving a state vehicle or a personal vehicle for state business to the employee's supervisor within 10 days of conviction.

(4) A state employee required to drive as part of the employee's job shall report an accumulation of conviction points of 12 or more according to the schedule in 61-11-203, MCA, for the past 36 months immediately preceding the infraction, whether accumulated while driving a state vehicle, a personal vehicle for state business or accumulated while driving a motor vehicle for any purpose within 10 days of the accumulation of 12 or more points to the employee's supervisor.

(5) Authorized drivers are responsible for promptly paying all penalties following the court procedures established for contesting citations.

(6) The above requirements also apply to those individuals authorized to drive under the conditions listed in ARM 2.6.205.

(7) The requirements specified in this rule apply to conviction points received after October 12, 2001.

(8) An agency has the authority to restrict employees otherwise authorized as drivers from using state vehicles when it knows they are unsafe drivers from means other than the accumulation of conviction points.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 06 through 08 reserved

2.6.209 ALCOHOL AND DRUGS

(1) No person under the influence of alcohol, illegal drugs, or improperly used prescription drugs may drive a vehicle for state business.

(2) No person may drive a vehicle for state business under the influence of any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.

(3) No person may have an alcoholic beverage container in the passenger compartment of a state-owned, leased, or loaned vehicle.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.210 CELL PHONE USE
(1) State employees shall drive in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or rights of a person entitled to use a street or highway.
(2) State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business. Exceptions to this rule are law enforcement and emergency response personnel.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 11 through 13 reserved

2.6.214 DISCIPLINE
(1) Failure to comply with the requirements of these rules may result in disciplinary action, including suspension or termination. Any supervisor who becomes aware of any violation of these rules by an employee they supervise shall take appropriate disciplinary action, according to the state discipline policy set forth in ARM 2.21.6501 through 2.21.6509, 2.21.6515, and 2.21.6522.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Office of the State Public Defender
Administrative Policies

Subject: **Public Participation Guidelines**	Policy No.: **235**
Title	Pages: **1**
Section:	Last Review Date:
Effective Date: **01/09/09**	Revision Date:

1.0 POLICY

These guidelines are intended to insure that the public has a reasonable opportunity to participate in deliberations and decisions that are of significant public interest. Montana's Constitution and statutes guarantee this right.

2.0 PROCEDURES

2.1 Post a meeting or hearing notice at least 72 hours in advance of the meeting or hearing.

2.2 Post the meeting or hearing notice on the state's electronic calendar, on the agency website, and personally to those who have previously shown an interest in the matter.

2.3 Include adequate details of potential or proposed action items.

2.4 Give notice of any closed session. Such sessions will be held and conducted in accordance with state law.

2.5 Include a full agenda for any meeting or hearing with a time allotted for public comment.

2.6 Provide a contact name, address, phone number, mailing and emailing addresses, including where to seek special needs or ADA accommodation.

2.7 Record minutes of meetings in accordance with 2-3-212, MCA, and make all minutes available for public inspection.

3.0 CLOSING

This policy shall be followed unless it conflicts with specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

4.0 Cross-Reference Guide

Art. II, Sec.8, MT Constitution
MCA 2-3-101, et seq.
ARM 1.3.101

Office of the State Public Defender
Administrative Policies

Subject: **Management of the Appellate Defender Office**	Policy No.: **301**
Title: **47**	Pages: **2**
Section: **1-205**	Last Review Date:
Effective Date: **5-5-10**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender encompasses the Appellate Defender Office (ADO) by statute. The following management structure has been established to conform with the requirements of Section 47-1-205, MCA. This structure has been in place since inception of the agency and is now formalized in policy.

2.0 PROCEDURE

2.1 Chief Public Defender

2.1.1 The Chief Public Defender shall appoint the Chief Appellate Defender who is a state employee exempt from the state classification and pay plan.

2.1.2 The Chief Public Defender shall determine the pay for the Chief Appellate Defender.

2.1.3 The Chief Public Defender shall ultimately be responsible for budget submissions for the ADO. The ADO budget shall be monitored by the Chief Public Defender in conjunction with the Chief Appellate Defender.

2.2 Chief Appellate Defender

2.2.1 The Chief Appellate Defender shall have exclusive management authority in the ADO in the following areas:

2.2.1.1 All personnel issues, including hiring, discipline and firing of staff;

2.2.1.2 Day-to-day operation of the office;

2.2.1.3 Assignment of cases, including determining which cases are to be contracted out and to whom;

2.2.1.4 Review and determination of issues to be raised, including the issue of ineffective assistance of counsel;

2.2.1.5 Determination as to whether an extraordinary writ should be filed; and

2.2.1.6 Approval of all invoices, contractor bills and special costs.

2.2.2 The Chief Appellate Defender shall assist in the development and monitoring of the program's budget in conjunction with the Chief Public Defender.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

Phone 406-496-6080

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Montana State Telephone Network Use	**Policy No.:** 501
Title	**Pages:** 2
Section:	**Last Review Date:** 4-1-07
Effective Date: 7-1-06	**Revision Date:**

1. POLICY

The state's telecommunications facilities are provided for the conduct of state business. The use of the state's telecommunications facilities for essential personal business must be kept to a minimum and not interfere with the conduct of state business. All Office of the State Public Defender employees are required to acknowledge that they understand and will adhere to this policy by signing the Telephone Use Acknowledgement Form (attachment A).

2. PERMITTED USE

In addition to state business, the state's telecommunications facilities may be used by state employees and officials for local and long distance calls to latch-key children, teachers, doctors, day care centers, baby sitters, and family members to inform them of unexpected schedule changes and other essential personal business. All in-state and out-of-state calls made on the State Telecommunications Network are billed to the originating state telephone number. Essential personal long distance calls must be collect, charged to a personal third-party number, or charged to a personal credit card.

3. COVERED FACILITIES

The state's telecommunications facilities include any state-owned, leased, contracted for, operated, or maintained telecommunications equipment, services, or facilities, including private branch exchanges, telephone key systems, teleconferencing systems, local and long distance telecommunications circuits, cellular telephones, data communications equipment, video capabilities, land mobile radio equipment, telephone credit cards, facsimile equipment, and voice mail.

4. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park, Butte, MT 59701
(406) 496-6091

ATTACHMENT A

TELEPHONE USE
ACKNOWLEDGEMENT FORM

By signing this form I acknowledge that I have read the "Montana State Telephone Network Use" policy and I understand that I am bound by the requirements in that policy.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME:_____

SIGNATURE:_____

DATED:_____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Computer Use	**Policy No.:**	**502**
Title	**Pages:**	**4**
Section:	**Last Review Date:**	**4-1-07**
Effective Date: 11-01-06	**Revision Date:**	

1. **POLICY**

The state's computer system and all programs on it belong to the State of Montana and are provided for the conduct of state business. The use of the state's computer facilities for essential personal business must be kept to a minimum and not interfere with the conduct of state business. All Office of the State Public Defender employees are required to acknowledge that they understand and will adhere to this policy by signing the Computer Use Acknowledgement Form (attachment A).

2. **PROCEDURES**

2.1 By using the state computer system, including but not limited to the Internet and e-mail system, employees understand that management may monitor, read and review any and all information accessed or stored in the system and/or on your assigned state computer.

2.2 The State of Montana has a business requirement to monitor or retrieve information on its computer system for a variety of reasons that include, but are not limited to, trouble shooting software problems, retrieval of work files, preventing system misuse and assuring compliance with software distribution policies. Employees do not have a right to privacy in any materials created, accessed, sent or received on state computer equipment whether password protected or not. Passwords may be overridden by the State.

2.3 *Very limited, reasonable* personal use of the state's email system may occur to send a personal email that does not contain foul, offensive, defamatory or pornographic information. Just like the use of the state telephone system, personal use of email should be limited and brief. Email sent over the state system, whether personal or state work related, should be proper in its content.

2.4 An employee may access a nonobscene, nonoffensive Web site on break time only. *Use common sense and good judgment.* Misuse of the state computer system by falsifying time sheets and recording nonwork time as work time can lead to disciplinary action up to and including termination.

2.5 To insure that the above guidelines are being met the state reserves the right to filter out or block inappropriate Internet sites and will from time to time conduct unannounced surveillance of any and all computer use by state employees. While the State will take steps to block offensive material and delete it when discovered, that does not mean that all accessible material is appropriate.

2.6 Documents deleted from any of your directories, including Outlook, may continue to exist and can be retrieved off of the system. A list of all Internet sites accessed by employees is available to management when management requests it or computer security personnel observe and report inappropriate use to management.

2.7 Logon IDs and passwords (e.g., CM numbers) are assigned to individuals for access to the Office of the State Public Defender data. The individual assigned an ID and password is responsible for the security of this ID. Passwords must be kept confidential. You may be liable for unauthorized access of information using your ID and password.

3. PROHIBITED USE

3.1 No one may use the state computer system or any of its programs for non job related purposes to access or send foul, offensive, defamatory or pornographic information.

3.2 The state has a zero tolerance policy for sexual harassment. Accessing or sending harassing or derogatory information such as comments demeaning a person's sex, race, religion, disabilities and sexual orientation will not be tolerated.

3.3 Do not use a personal email account such as Hotmail outside of the of the state Email system unless you have been granted an exception by the State Information Security Officer. Downloading an outside system on to the state system can open the door to viruses and other serious problems.

3.4 Prohibited activities include but are not limited to:
3.4.1 chain letters
3.4.2 communications to solicit voluntary participation in athletic betting pools, political causes, religious causes or personal organizations.

3.5 The state computer system may not be used to conduct or operate a personal commercial business or "forprofit" or "nonprofit" activities.

4.0 ITSD POLICIES

The enterprise policies found at http://itsd.mt.gov/policy/itpolicy.asp are also incorporated in the OPD policy by reference. These policies numbers start with ENT (enterprise), followed by the category (INT=Internet, Net=Network/Telecommunications, PCS=Personal Computers, SEC=Security) and a reference number.

5. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

If you have a question about a particular use ask your supervisor before you use the state computer system for that purpose and potentially expose yourself to disciplinary action.

Violation of any provision of this policy may result in disciplinary action up to and including termination.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

ATTACHMENT A

COMPUTER USE
ACKNOWLEDGEMENT FORM

By signing this form I acknowledge that I have read the "Computer Use" policy and I understand that I am bound by the requirements in that policy.

I understand that the State computer system (including the computer assigned to me by the Office of the State Public Defender) is the property of the State. I know that my supervisor may monitor or retrieve information created, stored, accessed by me or sent to or from me on the state computer system with or without notice.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME:_____

SIGNATURE:_____

DATED:_____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701
(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Vehicle Use	**Policy No.:** 503
Title	**Pages:** 7
Section:	**Last Review Date:** 1-29-08
Effective Date: 03-27-06	**Revision Date:**

1. POLICY

The Office of the State Public Defender (OPD) has adopted the State of Montana Vehicle Use Policy (Attachment A), found in the Administrative Rules of Montana, ARM 2.6.201-2.6.214. All OPD employees are required to acknowledge that they understand and will adhere to this policy, and that they understand the penalties for particular driving offenses (Attachment B), by signing the Vehicle Use Acknowledgement Form (Attachment C).

2. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

ATTACHMENT A

ADMINISTRATIVE RULES OF MONTANA

CHAPTER 6

RISK MANAGEMENT AND TORT DEFENSE

Sub-Chapter 2

State Vehicle Use

2.6.201 INTRODUCTION
(1) The following rules define acceptable uses for state-owned or leased motor pool vehicles as provided in 2-17-424, MCA. State employees or authorized individuals may be subject to additional guidelines, policies, insurance coverage exclusions, or regulations for vehicle/equipment fleet operations, provided that they do not conflict with these rules.
(2) Drivers and passengers must use installed seat belts at all times.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.202 DEFINITIONS As used in this sub-chapter, the following definitions apply:
(1) "State" as defined in 2-9-101, MCA.
(2) "State employee" as defined in 2-9-101, MCA.
(3) "State vehicle" means a motor vehicle, semi-trailer, snowplow, or other vehicle designed for travel on public roads that is subject to motor vehicle registration, including any machinery or apparatus attached to the vehicle. The term includes the following:
- (a) a "leased vehicle" obtained by the state through an open-ended lease or lease with an option to buy contract;
- (b) a "loaned vehicle" provided to the state as a gratuity;
- (c) an "owned vehicle" to which the state has title; and
- (d) a "rented vehicle" rented by the state for a fee, typically for short-term use in Montana or for out-of-state travel.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.203 AUTHORIZED DRIVERS AND USES
(1) Except as otherwise provided in this rule, the following individuals may operate a state vehicle if the driver possesses a valid driver's license appropriate to the type of vehicle to be driven, meets driver requirements set out in ARM 2.6.205, and the uses are as provided below:
- (a) a state employee to conduct business on behalf of the state;
- (b) a state employee in travel status to obtain food and lodging and to respond to medical emergency situations;
- (c) a state employee required to conduct state business to obtain items needed while in travel status;
- (d) a state employee may park a state vehicle overnight at the employee's residence if the employee must begin travel the next day or if the employee is

subject to emergency response, on-call, or other off-shift duty associated with state employment;

(e) a state employee required to stay overnight at a location other than the employee's established work location during nonwork time to drive to a cultural, recreational, or leisure activity or to conduct other personal business, if the activity is within 30 miles of the employee's lodging;

(f) a non-state employee enrolled and registered as a student at a university of the state to conduct university business;

(g) a non-state employee to aid or assist a disabled state employee if the aide has completed the risk management and tort defense division's (RMTD) vehicle use agreement and obtained authorization from the agency head or designee prior to the use;

(h) a non-state employee to assist a state employee or other individual during a medical emergency for transportation and related purposes. Prior approval is not required;

(i) a non-state employee who is an independent contractor or an employee of a temporary employment agency contracting with the state with prior approval from the agency head when a state employee is not available to operate the vehicle. The contractor must complete the RMTD's vehicle use agreement. The agreement must be signed by the agency head and presented to the motor pool or affected state agency prior to the use; and

(j) a non-state employee accompanying a state employee on official state business where the state employee becomes ill, fatigued, or is otherwise rendered physically or mentally incapable of driving and/or a compelling state interest is served by allowing the non-state employee to drive. Prior approval is not required.

(2) Any exception to the authorized drivers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.204 AUTHORIZED PASSENGERS AND USES

(1) Except as otherwise provided in this rule, the following individuals may ride as passengers in a state vehicle:

(a) a state employee conducting business on behalf of the state; or

(b) a non-state employee who is:

(i) an independent contractor conducting business on behalf of the state;

(ii) an aide rendering assistance to a disabled state employee;

(iii) a guest or client of the state, including a public employee, if conducting, participating in, or providing a benefit to the conduct of state business;

(iv) rendering assistance during an emergency situation; or

(v) a nursing infant if the parent is an authorized driver or passenger.

(2) Any exception to the authorized passengers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.205 DRIVER REQUIREMENTS

(1) Non-probationary employees required to drive as part of their job who have accumulated 12 or more conviction points according to the schedule specified in 61-11-203, MCA, over the most recent 36 months may not drive a state vehicle or personal vehicle for state business until having successfully completed a certified safe driver course approved by the RMTD and received authorization to drive from their agency head and RMTD. State employee drivers who have accumulated 15 or more conviction points according to the schedule specified in 61-11-203, MCA, may not drive a state vehicle or a personal vehicle for state business until the accumulated point total is less than 12 within the past 36 months.

(2) Non-probationary employees who have accumulated 18 or more points in the immediately preceding 36 months may not drive a state vehicle or a personal vehicle for state business until two years have passed during which they have not accumulated any conviction points according to the schedule specified in 61-11-203, MCA, have successfully completed a certified safe driver course approved by RMTD, and received authorization to drive from their agency head and RMTD.

(3) A state employee required to drive as part of the employee's job shall report any single driving infraction of five or more conviction points according to the schedule in 61-11-203, MCA, accumulated while driving a state vehicle or a personal vehicle for state business to the employee's supervisor within 10 days of conviction.

(4) A state employee required to drive as part of the employee's job shall report an accumulation of conviction points of 12 or more according to the schedule in 61-11-203, MCA, for the past 36 months immediately preceding the infraction, whether accumulated while driving a state vehicle, a personal vehicle for state business or accumulated while driving a motor vehicle for any purpose within 10 days of the accumulation of 12 or more points to the employee's supervisor.

(5) Authorized drivers are responsible for promptly paying all penalties following the court procedures established for contesting citations.

(6) The above requirements also apply to those individuals authorized to drive under the conditions listed in ARM 2.6.205.

(7) The requirements specified in this rule apply to conviction points received after October 12, 2001.

(8) An agency has the authority to restrict employees otherwise authorized as drivers from using state vehicles when it knows they are unsafe drivers from means other than the accumulation of conviction points.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 06 through 08 reserved

2.6.209 ALCOHOL AND DRUGS

(1) No person under the influence of alcohol, illegal drugs, or improperly used prescription drugs may drive a vehicle for state business.

(2) No person may drive a vehicle for state business under the influence of any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.

(3) No person may have an alcoholic beverage container in the passenger compartment of a state-owned, leased, or loaned vehicle.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.210 CELL PHONE USE
(1) State employees shall drive in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or rights of a person entitled to use a street or highway.
(2) State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business. Exceptions to this rule are law enforcement and emergency response personnel.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 11 through 13 reserved

2.6.214 DISCIPLINE
(1) Failure to comply with the requirements of these rules may result in disciplinary action, including suspension or termination. Any supervisor who becomes aware of any violation of these rules by an employee they supervise shall take appropriate disciplinary action, according to the state discipline policy set forth in ARM 2.21.6501 through 2.21.6509, 2.21.6515, and 2.21.6522.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

ATTACHMENT B

Definition of "points" against a driving license (61-11-203 MCA)

15 points —deliberate homicide resulting from the operation of a motor vehicle.

12 points —mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault; or
—any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used.

10 points —driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more.

8 points —failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.

6 points —operating a motor vehicle while the license to do so has been suspended or revoked.

5 points —reckless driving, or
—illegal drag racing or engaging in a speed contest in violation of the law, or
—any of the mandatory motor vehicle liability protection offenses.

4 points —willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law.

3 points —speeding, except as provided in 61-8-725 MCA, "A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than: 10 miles an hour during the daytime; or 5 miles an hour during the nighttime."

2 points —operating a motor vehicle without a license to do so, (this does not apply to operating a motor vehicle within a period of 180 days from the date the license expired); or
—all other moving violations.

ATTACHMENT C

VEHICLE USE
ACKNOWLEDGEMENT FORM

I have received and read a copy of the State of Montana Vehicle Use Policy (also found in the Administrative Rules of Montana, ARM, 2.6.201 through 2.6.214).

I truthfully state that I have a valid, non-conditional driver's license and that my license is not currently under suspension.

My signature below indicates that I have received and read a copy of the Office of the Public Defender Vehicle Use Policy, I understand the penalties for particular driving offenses (Attachment B), and the requirements of notice to my employer should the status of my driving record change.

I have also read and understand the Office of the State Public Defender Fuel Conservation Strategy, and I agree to abide by the Vehicle User/Operator Guidelines.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: _____

SIGNATURE: _____

DATED: _____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	**Reimbursement for Personal Vehicle Use**	**Policy No.:**	**504**
Title		**Pages:**	**1**
Section:		**Last Review Date:**	**2/10/10**
Effective Date:	**9/1/09**	**Revision Date:**	**3/30/10**

1. POLICY

The Office of the State Public Defender has made considerable effort and financial investment in making state cars available in each office. Because of budget constraints as well as the need to maximize the use of the state vehicles, the following policy is adopted.

2. PROCEDURE

2.1 An employee must use a state car when traveling on state business in any instance when a state car is available or when carpooling in a state car is an option.

2.2 If an employee chooses to drive their own vehicle *for any reason* when a state car is available, the employee will not be reimbursed for mileage.

2.3 An employee seeking mileage reimbursement when a state car is unavailable must attach written documentation from the Office Fleet Manager stating the travel date, destination, and that a state car is unavailable on that date. For Helena employees, notification from the State Motor Pool stating that a state car is unavailable is also required. The travel voucher itself does not constitute appropriate documentation that a vehicle is unavailable.

2.4 Any exceptions to employee reimbursement under this policy must be pre-approved prior to travel by the Chief Public Defender or their designee.

3. CROSS-REFERENCES

OPD Policy 220, Vehicle Management Policy
MOM 1-310, State Travel Policy

4. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	**Fuel Card Policy**	**Policy No.:**	**505**
Title		**Pages:**	**6**
Section:		**Last Review Date:**	
Effective Date:	**10-29-10**	**Revision Date:**	

1. POLICY

The Office of the State Public Defender (OPD) has adopted the State of Montana Fuel Card Policy (Attachment A). All OPD employees are required to acknowledge that they understand and will adhere to this policy by signing the Fuel Card Use Employee Agreement Form (Attachment B).

2. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination and possible criminal charges.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

Montana Operations Manual **Policy**		**Policy Number**	1-0790.00
		Effective Date	9/22/2010
		Last Revised	
Issuing Authority	Department of Administration		

Fuel Card Policy

I. PURPOSE

The policy establishes the requirements for managing and using fuel cards for efficient and cost-effective fuel and maintenance purchases when conducting State business.

II. SCOPE

This policy applies to Executive Branch agencies that operate agency-owned, fuel-powered vehicles and equipment. The Montana Department of Transportation's daily-use and agency-leased motor pool vehicles are exempt from this policy.

III. PROCEDURES / REQUIREMENTS / RESPONSIBILITIES

A. Agencies must:

1. Use the Department of Administration's (DOA) State Procurement Bureau's exclusive fuel card contracts.

2. Designate an authorizing official(s) to oversee its fuel card procedures. Provide the authorizing official's personal contact information to the DOA's State Procurement Bureau.

3. Establish procedures and assign responsibilities to manage fuel card use. Procedures and responsibilities must include the following:

    a. Collect and compare monthly vehicle odometer readings to the vehicle's monthly fuel transactions to ensure fuel consumption is appropriate for the vehicle.

    b. Retain monthly statements.

    c. Resolve billing disputes.

    If an error is found on a statement (e.g., employee did not make the transaction, incorrect amount, etc.), the vendor must be contacted by the agency to try to resolve the dispute. If the vendor agrees an error has occurred, the account is credited on the next statement.

If the vendor does not agree an error has occurred, the disputed transaction will be identified and submitted in writing to the card provider within 60 days of the transaction date. The amount due on the next monthly statement will be reduced by the amount of the disputed item until the transaction dispute is resolved. If a dispute is not submitted within 60 days of the transaction date, the agency is responsible for paying the disputed item.

4. Establish internal controls for using fuel cards. Available controls include:

    a. Limit on the number of transactions during a certain time period (day, month, week).
    b. Limit dollar amount per transaction.
    c. Limit Merchant Category Codes.
    d. Restrict purchases to specific hours of the day or days of the week.
    e. Require odometer reading at the point-of-sale.

Note: Default fuel card controls limit purchases to fuel and maintenance and allow three transactions per day up to a total of $500.

B. Authorizing Official(s) will:

1. Assign a fuel card to each agency-owned vehicle showing the vehicle's license plate number on the front of the card.

2. Issue separate fuel cards for non-vehicular uses (e.g., lawn mower).

3. Require each employee authorized to operate an agency-owned vehicle to read the Fuel Card Policy and sign the Fuel Card Use Employee Agreement Form (attached) before they receive a Personal Identification Number (PIN).

4 Retain the signed Fuel Card Use Employee Agreement Form for two years after the employee's termination date.

5. Assign a unique PIN to each authorized employee. Generic PINs are prohibited.

6. Manage internal controls in accordance with the agency's procedures.

7. Immediately cancel fuel cards that are lost, stolen, or assigned to a vehicle that is transferred, sold, or surplused.

8. Maintain a record of the agency's approved exceptions to the Fuel Card Use policy.

C. Employees authorized to use fuel cards must:

1. Read the Fuel Card Policy.

2. Sign the Fuel Card Use Employee Agreement Form acknowledging their responsibilities for fuel card use.

   Note: Employees are prohibited from using premium grade fuel unless required by the vehicle operation manual.

D. Supervisors of authorized employees must:

Review and approve monthly fuel card transactions for each authorized employee under their supervision and ensure fuel card use is consistent with the employees' work assignments.

IV. REQUEST FOR EXCEPTIONS

The authorizing official may submit a request for an exception to any part of this policy to the DOA's State Procurement Bureau. The State Procurement Bureau will determine if an exception is granted based on the following criteria:

A. The policy has created an undue hardship on the agency;

B. The circumstances are non-traditional and require unique accommodation; or

C. The exception will not compromise internal controls.

V. VIOLATIONS

Each agency is responsible for policy enforcement and investigating all alleged violations and complaints. Agencies will take appropriate disciplinary action including, but not limited to, cancellation of an employee's fuel card privileges, termination, and possible criminal charges.

VI. DEFINITIONS

A. Authorized Employee: An employee designated to use a fuel card.

B. Authorizing Official: An individual(s) designated by the agency to authorize and cancel fuel cards, manage internal controls, and maintain a record of the agency's exceptions.

C. Card Provider: The State's contracted fuel card provider.

D. Ethanol-Blended Gasoline: A fuel mixture of gasoline and ethanol produced from agricultural products as defined in 2-17-414, MCA.

E. Generic PIN: A PIN not directly assigned to a single individual. Generic PINs are prohibited.

F. Merchant Category Code: A number used by the fuel card vendor to classify suppliers into market segments

G. Personal Identification Number (PIN): A unique number assigned to an individual.

H. Vehicle Maintenance: Expenses including gas, oil, repairs, labor, storage, and service.

I. Vendor: The point-of-sale for a fuel or vehicle maintenance purchase.

J. Non-Vehicular Use: Uses associated with equipment such as a lawn mower, snow sweeper, leaf blower, or chainsaw.

VII. CROSS REFERENCE GUIDE

The following laws, rules, or policies contain provisions relevant to fuel purchasing cards. This list is not exhaustive; other policies may apply.

A. ARM 2.6.203 Authorized Driver – definition.

B. 2-17-414, MCA State vehicles use of ethanol-blended gasoline – definition

C. 2-17-418, MCA Agency records on fuel efficiency measures

D. 2-17-421, MCA Use – state business only – exception, compensation for driving personal vehicle – penalty for private use

E. 2-17-425, MCA Limit on use of state vehicle to commute to worksite – definitions

F. Title 18, Chapter 4, MCA Montana Procurement Act

VIII. CLOSING

For questions about this policy, contact the State Procurement Bureau at:

Department of Administration
State Procurement Bureau
125 N. Roberts Street, Mitchell Building, Room 165
Helena, MT 59620-0135

406-444-2575
Devin Garrity, email: dgarrity@mt.gov

ATTACHMENT B

STATE OF MONTANA
FUEL CARD USE EMPLOYEE AGREEMENT

1. I have read, understand, and will comply with the Fuel Card Policy.
2. I understand I am required to use ethanol-blended gasoline when the manufacturer allows and I am prohibited from using premium grade fuel unless required by the vehicle operations manual.
3. I agree to use the card for all fuel purchases unless obtained from a state-owned bulk site with a manual transaction process.
4. I will immediately notify the authorizing official if a card is lost or stolen or if my PIN is compromised.
5. I understand that I am required to comply with internal control procedures.
6. I agree not to share my Personal Identification Number (PIN) with any other person.
7. I understand I can only use the card for fuel and authorized vehicle maintenance purchases for state-owned vehicles.
8. If I misuse the card for personal purchases, I authorize the State to deduct from my salary or from other monies owed me, an amount equal to the total of the personal purchases. I also agree to allow the State to collect any amounts owed by me even if the State no longer employs me.
9. I understand improper use of this card may result in disciplinary actions, including termination of employment and criminal action.
10. I understand the State may terminate my card use privileges at any time for any reason.

Employee Signature	Authorizing Official's Signature
Employee Printed Name	Authorizing Official Printed Name
Date	Date

This form must be signed and returned to:
Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701
(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	Overtime and Compensatory Time for Non-Exempt Employees	Policy No.:	510
Title		Pages:	4
Section:		Last Review Date:	4-1-07
Effective Date:	5-1-06	Revision Date:	

1. BACKGROUND

On April 17, 1989, the Attorney General, of the State of Montana issued an opinion that state and local government employees who are covered by the Federal Fair Labor Standards Act (FLSA), are not subject to the provisions of the Montana Minimum Wage and Hour Act. This opinion allows agencies flexibility in administering overtime provisions for non-exempt employees.

2. POLICY

It is the policy of the Office of State Public Defender (OPD) to comply with the FLSA, its regulations (29 CFR 553), state rules (Montana Operations Manual, Volume III, Policy 3-0211), and this policy in the administration of overtime compensation and non-exempt compensatory time. Compensatory time for employees exempt from the FLSA will be administered consistent with the provisions found in the state's Exempt Compensatory Time Policy (MOM, Volume III, Policy 3-0210).

3. DEFINITIONS

A. "Non-exempt compensatory time" means time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations, and this policy. Accrued time may be taken as approved time off at a later date.

B. "Non-exempt or covered employee" means an employee subject to the overtime provisions of the FLSA and its regulations. It does not mean certain employees exempt from the overtime provisions of the FLSA in a position designated as executive, administrative, professional, or outside salesmen, as these terms are defined in 29 CFR 541.

C. "Overtime" means time worked by a non-exempt employee in excess of 40 hours in a workweek. The rate of overtime pay will be one and one-half times the employee's regular hourly wage, with the exception of on-call

reimbursement, which will be reimbursed at the regular rate of pay unless the employee is called in to work.

D. "Workweek" means a regular recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week. The workweek may begin on any day of the week and at any hour of the day. Once established, a workweek may not be changed unless the change is intended to be permanent.

4. PROCEDURE

A. The Office of State Public Defender may grant non-exempt employees who work overtime either cash overtime pay or non-exempt compensatory time off.

B. If a covered employee would like to accrue and use non-exempt compensatory time, the covered employee must request this option by completing the "Overtime/Compensatory Time Selection" agreement (Attachment A) and returning it to the appropriate supervisor and the OPD Human Resource Office. Covered employees will be paid cash for overtime hours worked unless they complete the agreement. A new employee will make their request at the time of hire. Employees electing to receive non-exempt compensatory time may change their selection to receive overtime on a quarterly basis, such change to be effective with the pay periods of January 1, April 1, July 1 and October 1 unless approved by the immediate supervisor.

C. The Office of State Public Defender may, at any time, pay cash for all or any portion of a covered employee's accrued non-exempt compensatory time balance.

D. All hours worked in a pay status, with the exception of on-call hours, are counted as hours worked for the purpose of calculating a workweek for overtime pay requirements. A supervisor may adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or the accrual of nonexempt compensatory time.

E. Overtime and non-exempt compensatory time is earned and recorded on the time and attendance form in no smaller than one-half hour increments.

F. Non-exempt compensatory time must be taken off in no less than one-half hour increments. The employee's immediate supervisor must approve requests for use of compensatory time off in advance.

G. A non-exempt employee may accrue a maximum balance of 120 hours of

non-exempt compensatory time. When the non-exempt compensatory time balance exceeds 120 hours, the covered employee will be paid cash overtime compensation.

H. If a non-exempt employee changes from non-exempt to exempt status through a personnel action such as a promotion, or the employee terminates employment with OPD, the office will cash out any unused non-exempt compensatory time.

5. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions about the administration of overtime compensation or non-exempt compensatory time in lieu of overtime compensation should be discussed with your immediate supervisor or with the Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

ATTACHMENT A

OVERTIME/COMPENSATORY TIME SELECTION

For completion by employees in non-exempt status.

NAME: _____

JOB TITLE: _____

FISCAL YEAR: _____

Select one of the following options for your preferred compensation of overtime worked for the fiscal year, or until a new form is submitted.

1. Overtime Pay: _____
   (Pay at one and one-half times your hourly rate.)

2. Compensatory Time: _____
   (Time off at one and one-half hours for every overtime hour worked.)

I understand that the Office of the State Public Defender management reserves the right to approve the granting of FLSA compensatory time in lieu of overtime pay. The Office of the State Public Defender may at any time pay cash for all or any portion of a covered employee's accrued FLSA compensatory time. I may submit a selection form reversing my previous selection on a quarterly basis, effective with the pay periods of January 1, April 1, July 1, and October 1.

_____ _____
Employee's Signature Date

APPROVED BY:

_____ _____
Supervisor's Signature Date

This form must be signed and returned to:
Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Alternate Work Schedules	Policy No.: 511
Title	Pages: 5
Section:	Last Review Date:
Effective Date: 02-05-09	Revision Date:

1. POLICY

It is the policy of the Office of the State Public Defender (OPD) that alternate work schedules may be implemented provided that they do not interfere with mandatory office hours or the business goals of the agency.

This policy applies to employees in all OPD offices. Provisions of this policy apply only to alternate work schedules requested by the employee, and not to work schedules established by management. Nothing in this policy limits the authority of the agency to establish or change work schedules as necessary for the successful operation of the Office of the State Public Defender (OPD).

2. OBJECTIVE

OPD recognizes that alternate work schedules can sometimes benefit both employees and the agency. Regional Deputy Public Defenders, the Chief Appellate Defender or the Administrative Director (management) may extend the privilege of alternate work schedules at the request of employees in accordance with the guidelines, procedures and standards detailed in this policy.

Alternate work schedules may be approved only when the needs of the individual office can be met. Before approving or denying employee requests for alternate work schedules, management must ensure that such schedules:

a. Provide for adequate staff coverage of the office;
b. Ensure that client needs will be met;
c. Ensure that court schedules will be adhered to;
d. Do not impede the overall productivity of the individual office.

Alternate work schedules may not be granted where they would result in an office not maintaining adequate staffing coverage during the statutorily required office hours of 8:00 a.m. to 5:00 p.m. on business days (Sec. 2-16-117, MCA).

3. DEFINITIONS

3.1. CORE WORK HOURS: Core work hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday. Other work schedules may be established by Management to effectively operate programs and meet objectives.

3.2. ALTERNATE WORK SCHEDULE: A schedule that allows an employee's workday to start and/or end at an earlier or later time than the core work hours.

3.3. MANAGEMENT: For the purposes of this policy, "management" refers specifically to a Regional Deputy Public Defender, the Chief Appellate Defender or the Administrative Director. It does *not* include Managing Attorneys or Office Managers.

4. PROCEDURES

4.1. HOURS

4.1.1 Because Montana law requires all state offices to be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for state holidays, all offices must provide adequate staff coverage during those hours.

4.1.2 A non-paid break period (meal break) may be a minimum of half an hour and a maximum of two hours long. All employees are encouraged to take at least a half-hour non-paid break period. Requests to skip a meal break must be approved by management.

4.1.3 An employee's request regarding the time at which to take a non-paid break period must be approved by management. Management must also approve exceptions.

4.1.4 Employees may, with the approval of their immediate supervisor, make temporary deviations from their established work schedule provided hours worked comply with this policy.

4.1.5 Alternate work hours or non-paid break periods may occasionally be changed beyond the limits of this policy to accommodate unusual circumstances such as external training course schedule requirements. Approval by management is required.

4.1.6 Employees may take one paid 15-minute duty-free break for every four hours worked, as long as this break does not interfere with the successful operation of the office.

4.1.7 Employees may not delay the beginning of their workday, extend their non-paid break period or terminate the end of their workday early to compensate for the paid duty-free breaks not taken.

4.1.8 No overtime or compensatory time is earned as a result of working an alternate work schedule unless it results in the employee working more than 40 hours in a workweek.

4.1.9 Holiday benefits will be paid according to the State Holiday Policy MOM 3-0325. No employee may receive more than 8 hours of pay for the holiday benefit. Employees who are scheduled by management to work more than an 8 hour workday may be required to take appropriate leave or, with management approval, make up time during the same workweek. If an employee is required to work on a holiday the employee will receive the holiday benefit as a banked benefit to use in the future in addition to reimbursement for the actual hours worked.

4.2. APPLICATION PROCEDURE

4.2.1 Any employee working in an office where alternate work schedules have been implemented may request an alternate schedule from management. The request should specify the hours of work desired, the desired time for a non-paid break period (meal break) the proposed effective date and the approximate desired duration of the schedule.

4.2.2 Employees must submit requests for alternate work schedules in writing to management.

4.2.3 Any employee who has been denied a requested alternate work schedule may request a review by the Chief Public Defender. The decision of the Chief Public Defender shall be final. Denial of an alternate work schedule is not grievable under the State Grievance Procedure, MOM 3-0125.

4.2.4 The employee shall be notified in writing of approval or denial of the request for an alternate work schedule.

4.2.5 Each employee will be responsible for maintaining and posting a schedule of the employee's alternative work schedule hours and making sure that there is a current version on file with the front desk, and management.

4.2.6 Employees beginning or ending their work day before or after the core hours of 8:00 a.m. and 5:00 p.m. Monday through Friday are required to notify office staff of their alternate office hours. Employees using voice mail or electronic (Outlook) calendars will reflect the alternate work schedule as appropriate.

4.3. CRITERIA FOR APPROVAL

4.3.1 Management may approve alternate work schedules on a trial basis to determine if the needs of the agency are met.

4.3.2 When establishing alternate work schedules, management must assure coverage of essential functions during the core work hours or at such other times as the accommodation of the public or the proper transaction of business requires.

4.3.3 If two or more employees desire the same alternate work schedule hours, management will review the request and will resolve the issue in the best interest of the mandatory office hours and or the business goals of the agency. Rotating hours may be allowed to resolve conflicts if they do not place an undue burden on office operations.

4.3.4 Approval of alternate work schedules shall be made with regard to the best interests of the state as well as the desires of the requesting employee. Where the interests of the state require the presence of the employee during core business hours, the interests of the state override the employee's interest.

4.4. CHANGING ALTERNATE WORK SCHEDULES

4.4.1 Temporary deviations from an employee's established alternate work schedule need only verbal approval as specified in section 4.1.4 of this policy. Employees are required to notify office staff of their alternate office hours. Employees using voice mail or electronic (Outlook) calendars will reflect the alternate work schedule as appropriate.

4.4.2 Employees wishing to change established alternate work schedules must notify management at least 10 days before the proposed date of change. Approval or denial of the request must be made in writing no later than five days from the date of the request.

4.4.3 Management may change any employee's working hours as deemed necessary for the successful operation of OPD programs, or if they inhibit maximum efficiency of office operations. An employee's hours may not change without 10 working days notice. If the employee agrees, the change in hours may take place immediately.

4.4.4 The Chief Public Defender may withdraw approval for an alternate work schedule.

4.5. SUPERVISION

4.5.1 Management in each office is to maintain a staffing schedule for their area of responsibility. It should be reviewed, at a minimum, when changes are requested to ensure both adequate coverage and supervision.

4.5.2 Management is responsible for ensuring that the office's productivity is satisfactory and that established alternate work schedules are implemented and followed according to this policy.

4.5.3 In the event that alternate work schedules have an impact on the individual's ability to meet performance standards or have an impact on overall agency operations, management will use standard disciplinary procedures on an individual basis.

5. CROSS REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to Alternate Work Schedules. The list should not be considered exhaustive—other policies may apply.

State Laws

2-16-117, MCA Mandatory Office Hours

State Personnel Policies

MOM 3-0210 Overtime and Nonexempt Compensatory Time
MOM 3-0211 Exempt Compensatory Time
MOM 3-0305 Annual Leave
MOM 3-0310 Sick Leave

MOM 3-0125 Grievances
MOM 3-0320 Disaster and Emergency Leave
MOM 3-0325 Holidays

6. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions concerning this policy can be directed to the Regional Deputy Public Defender, the Chief Appellate Defender, the Administrative Director or to the Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	**Performance Evaluations**	**Policy No.:**	**515**
Title	**47**	**Pages:**	**2**
Section:	**1-202(9)**	**Last Review Date:**	**10/28/09**
Effective Date:	**3/14/07**	**Revision Date:**	**11/10/09**

1. POLICY

Each employee of the Office of the State Public Defender shall have their work performance evaluated on a yearly basis.

2. PROCEDURE

2.1 Performance evaluations shall be conducted by the following on a form approved by the Chief Public Defender:

- 2.1.1 Regional Deputy Public Defenders shall be evaluated by the Chief Public Defender.
- 2.1.2 Managing Attorneys shall be evaluated by the Regional Deputy Public Defender. The Chief Public Defender will review the evaluation before it is discussed with the employee.
- 2.1.3 Assistant Public Defenders shall be evaluated by the Managing Attorney. The Regional Deputy Public Defender will review the evaluation before it is discussed with the employee.
- 2.1.4 Support staff will be evaluated by the supervising attorney (Regional Deputy Public Defender or Managing Attorney). The Regional Deputy Public Defender will review the evaluation before it is discussed with the employee if the Managing Attorney conducted the evaluation.
- 2.1.5 Investigators will be evaluated by the Regional Deputy Public Defender in conjunction with the Investigator Supervisor(s). The Investigator Supervisor(s) will be evaluated by the Chief Public Defender.

2.2 In conducting the evaluation, the evaluator may obtain information from any of the following:

- 2.2.1 Clients;
- 2.2.2 Co-workers (attorneys, investigators, office staff);
- 2.2.3 Judicial personnel;
- 2.2.4 Faculty from any training the employee attends.

2.3 In addition, attorneys will be observed in court by the evaluator.

2.4 The employee shall be interviewed pursuant to the performance evaluation.

2.5 The person conducting the performance evaluation shall meet with the employee to review and discuss the evaluation. If the employee disagrees with the appraisal, s/he has the right to submit, within 10 working days of receipt of the appraisal, a written rebuttal to be attached to the document.

2.6 A permanent employee may file a grievance under the state grievance procedure outlined in MOM 3-0115 Performance Management and Evaluation.

2.7 Once all parties have signed the performance evaluation, a copy will be given to the employee. If the employee refuses to sign the form, the supervisor will document on the form that the employee refused to sign the document. The original will be placed in the employee's personnel file along with any written comments received from the employee. The performance evaluation will be maintained throughout the term of employment and retained in compliance with the State Records Retention Schedule.

3. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be address to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Pro Bono Legal Services	**Policy No.:** 525
Title	**Pages:** 6
Section:	**Last Review Date:**
Effective Date: 3-14-07	**Revision Date:**

1. PURPOSE AND SCOPE

This policy addresses the performance of pro bono legal services by attorneys employed by the Office of the State Public Defender (OPD).

2. DEFINITIONS

2.1 "Pro bono legal services" means legal services described in Mont.R.Prof.Conduct 6.1, which are performed without the expectation of compensation for:

a. low income individuals who otherwise lack the ability to retain attorneys to provide legal services for them;

b. charitable, civic, community, governmental, health and education organizations in matters which are designed to assist person of limited means;

c. individuals, groups or organizations seeking to secure or protect civil rights; or

d. improve the law, legal system or the legal profession.

3. GENERAL POLICY

Approximately 190,000 low income Montanans are eligible for free legal assistance from the Montana Legal Services Association (MLSA) based on applicable income eligibility guidelines. Currently MSLA is staffed at a level of one attorney for each 17,270 eligible recipients. This compares with a ratio of one Montana attorney for every *330* residents. The Helena MLSA office has one full-time lawyer devoted to more than four counties. By any standard, there is a large unmet need for legal services for low income persons in Montana. The Montana Supreme Court has adopted a Rule of Professional Conduct that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay" and that "[a] lawyer should render at least 50 hours of pro bono public legal services per year." Mont.R.Prof. Conduct 6.1. It is the policy of the Public Defender's Office to encourage attorneys to volunteer to provide pro bono legal services in compliance with this policy and other applicable provisions of Montana law and the Montana Rules of Professional Conduct for lawyers.

4. USE OF AGENCY RESOURCES

4.1 Hours of Work

Public defender attorneys are encouraged to seek pro bono opportunities that can be accomplished outside of scheduled working hours.

However, pro bono legal services activities may sometimes occur during work hours. Supervisors are encouraged to be flexible and to accommodate, where feasible, the efforts of the attorneys they supervise to perform pro bono services. Employees seeking to participate in pro bono activities during regularly scheduled work hours may be granted annual leave, compensatory time off, or leave without pay, consistent with policies governing the use of such leave by state employees generally. Supervisor's decisions as to the authorization of leave may not be influenced by a supervisor's personal views regarding the substance of the pro bono activity.

4.2 Use of Office Equipment

Pro bono legal services are services provided in the public interest and in satisfaction of an ethical obligation of all attorneys to ensure that legal services are made available to persons of limited economic means. The Congress of the United States has recognized that this is not a private matter by authorizing the expenditure of tax dollars for the support of the national Legal Services program. Pro bono legal services therefore do not constitute the "private business" of the attorney for purposes of Mont. Code Ann. § 2-2-121(2)(a). Nevertheless, respect for the public trust requires that public agency attorneys refrain from inappropriate use of state resources for purposes not connected to the agency's mission. Use of law books or on-line resources for which there is no usage-based charge in the performance of pro bono services involves only a negligible additional expense, if any, and is therefore permissible. When office computers, printers, and telephones are used in moderation for pro bono legal services, there is only negligible additional expense to the State for electricity, ink, and wear and tear, and such use therefore is permissible as long as the agency is reimbursed for supplies in accordance with Section 8, below.

This policy does not authorize the use for pro bono services of commercial electronic services for which there is a usage-based charge to the State.

Consistent with this policy, executive branch attorneys may use office telephone and facsimile machines for essential pro bono-related communication as long as no long distance or other additional usage-based charges to the State are incurred, the agency is reimbursed for any

fax paper used in connection with the pro bono services, and the usage does not interfere with official business.

This policy does not supersede agency policies designed to protect the safety or security of computer or local area network operations. Any use of agency-provided equipment for pro bono activities must be consistent with such policies.

This policy is also subject to any restrictions arising from law or contract on the use of agency equipment or supplies.

Public defender attorneys should contact their supervisors if there is any question as to whether an activity involves "negligible additional expense," interferes or threatens to interfere with official business, and is consistent with agency computer security policies or legal or contract restrictions on use of equipment or supplies.

4.3 Clerical Support

An attorney may not assign or otherwise require pro bono legal services of clerical or administrative support personnel. Office support personnel who are willing to volunteer to assist with the provision of pro bono legal services by agency attorneys may do so as long as the volunteer work does not interfere with the performance of the primary responsibilities to official duties. Professional support staff who serve as volunteers in pro bono services shall take leave or compensatory time for time used during the work day or develop a flexible work schedule with their supervisor in accordance with office policy.

4.4 Letterhead

A public defender attorney may not use office letterhead or agency or office business cards in the performance of pro bono legal services.

5. CONFLICT OF INTEREST

5.1 General

Public defender attorneys are bound by the Rules of Professional Conduct for attorneys and the ethical rules governing state employees to avoid conflicts of interest. These attorneys may not accept pro bono clients in matters which create or appear to create a conflict of interest with their work for the State. Such a conflict exists, among other situations, if a pro bono representation would require the attorney's recusal in a matter involved in the attorney's official duties.

5.2 Prohibited actions

Given the public defender's role in criminal cases and in cases involving the State of Montana, public defender attorneys may not undertake pro bono representation in any case involving: (a) actual or suspected abuse

against a partner or family member, or any other criminal conduct by one or both parties: or (b) an administrative or judicial proceeding in which the State of Montana or any political subdivision thereof is a party, or in which state interests are likely to be involved, *except* that a public defender attorney may participate in a case in which the State of Montana. Department of Public Health and Human Services ("DPHHS") is providing child support enforcement services under Title IV-D of the Social Security Act to one or more of the parties. [See Mont. Code Ann. § 40-5-202(5)]. In any such case, the public defender attorney must make it clear to both the client and DPHHS that the attorney is acting in his or her individual capacity and that the attorney will not continue to represent the client should there be an appeal to the Montana Supreme Court.

6. FORMALITIES OF REPRESENTATION

6.1 Retainer Agreement

Public defender attorneys subject to this policy shall use the model retainer agreement attached (Attachment A) to this policy, making explicit to a pro bono client that the attorney is acting in his or her individual capacity and not as a representative of the State of Montana. The client must sign the agreement acknowledging that fact.

6.2 Malpractice Insurance

The State of Montana does not provide malpractice insurance coverage for the pro bono activities of its attorneys, since such activities are outside the course and scope of the attorney's official duties. See Mont. Code Ann. § 2-9-305.

7. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

Public defender attorneys subject to this policy who provide pro bono legal services may not indicate or represent in any way that they are acting on behalf of the State or any agency or office of the State, or in their official capacity. The incidental identification of the public defender attorney as a State agency employee - for example, when an office post office box address or telephone number is used - is not prohibited. The public defender attorney is responsible for making it clear to the client, any opposing parties, or others involved in the pro bono case, that the attorney is acting in his or her individual capacity as a volunteer and not as a representative of the State or any of its agencies. Generally, state offices may not be used for meetings with clients or opposing counsel in a pro bono case unless the office space is a common area in a building not associated only with the public defender's office.

8. **REIMBURSEMENT**

Public defender attorneys subject to this policy must reimburse their agencies for costs associated with printing, photocopying, long distance telephone charges, or faxing. When a public defender attorney accepts a pro bono case, the attorney shall keep a log of the number of pages printed on office printers, the number of pages copied on office photocopiers, and the number of pages received over an office facsimile machine. The attorney shall reimburse the state at the rate of fifteen cents per page, payable in one lump sum by May 31 of each fiscal year. Public defender attorneys should use their personal credit cards for any long distance phone charges; however, if a long distance telephone call must be made that results in a charge to the state, the attorney shall report the call on the case log and reimburse the office for the actual amount of the call. The attorney shall request prior permission from his or her supervisor if the anticipated costs exceed $50 per case.

9. **DISCLAIMER**

This policy is intended only to encourage increased pro bono activities by public defender attorneys and is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party, against the State of Montana, its agencies, officers, or any person.

10. **PERSONAL FAMILY LEGAL MATTERS**

Notwithstanding any other provision of this policy, a public defender attorney may perform personal and family legal services including counseling family members in matters involving criminal law, provided the activity does not interfere with the proper and effective performance of the attorney's official duties.

11. **CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be address to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

ATTACHMENT A

RETAINER AGREEMENT

The undersigned client (CLIENT) engages the undersigned attorney (ATTORNEY) for legal representation in the following matter:

_____

_____

_____

_____

ATTORNEY will make no charge to the client for attorney fees in the matter. CLIENT acknowledges that ATTORNEY is acting in ATTORNEY'S individual capacity and is not acting as a representative of the State of Montana, Office of the State Public Defender, or any other state agency.

CLIENT will cooperate fully with ATTORNEY and will provide all information known by or available to CLIENT which may aid ATTORNEY in representing CLIENT.

CLIENT authorizes and directs ATTORNEY to take all actions which ATTORNEY deems advisable on CLIENT's behalf. ATTORNEY agrees to notify CLIENT promptly of all significant developments and to consult with CLIENT in advance as to any significant decisions concerning those developments.

ATTORNEY will represent CLIENT diligently but makes no promises or representations as to the success of those efforts. ATTORNEY may terminate representation of CLIENT: (1) if ATTORNEY believes further action is not justified on behalf of CLIENT, or (2) if CLIENT does not cooperate with ATTORNEY.

CLIENT is responsible for any costs incurred other than attorney's fees. Efforts shall be made to waive costs whenever possible.

This Retainer does not cover an appeal. In the event an appeal becomes possible, ATTORNEY will decide at that time whether or not to further represent CLIENT.

_____ _____

DATE CLIENT

_____

ATTORNEY

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Workplace Safety	**Policy No.: 530**
Title 39	**Pages: 5**
Section: 71	**Last Review Date:**
Effective Date: 09-01-07	**Revision Date:**

1.0 POLICY

1.1 It is the purpose of this policy to promote employee health and safety and to establish and administer a safety program pursuant to the Workers' Compensation provisions of MCA 39-71 and the Montana Safety Culture Act, MCA 39-71-1501. The Montana Safety Culture act requires each public or private employer to establish and administer a safety program in accordance with rules adopted by the Department of Labor pursuant to 39-71-1505.

1.2 The frequency and severity of workplace accidents and injuries will be minimized by:

A. Creating an Office of the State Public Defender (OPD) Safety Committee; and
B. Assigning authority, responsibility and accountability to OPD employees and supervisors for implementing the OPD Safety Program.

2.0 RESPONSIBILITIES/REQUIREMENTS

2.1 Chief Public Defender

The Chief Public Defender is ultimately responsible for minimizing work-related losses and accidents by encouraging and supporting an agency-specific safety program. To accomplish this, the Chief Public Defender will:

A. Ensure this safety policy is followed by all public defender offices statewide.
B. Appoint a Safety Committee Chairperson (SCC) to work with the Regional Deputy Public Defenders and the Managing Attorneys (supervisors) in implementing the safety program.
C. Require that all supervisors be responsible for providing new employees an orientation which includes a safety component.
D. Require that all employee job profiles and performance appraisals include safety-related requirements.

2.2 Safety Committee

It is the responsibility of the Safety Committee to:

A. Recommend to supervisors safety training and awareness programs or topics that could be made available to OPD employees.
B. Recommend to supervisors safety policies, practices and procedures.
C. Assist supervisors in training OPD employees on safety-related topics.
D. Assist supervisors in monitoring the workplace for safe practices.
E. Develop incentive programs to promote safety.
F. Gather and review safety checklists created by safety professionals and others that relate to work environments within the OPD. These checklists will be available to assist supervisors with monitoring and addressing work place issues for obvious safety hazards within their work area.

G. Assist supervisors in finding new members for building Employee Safety Units (ESU). ESU's are groups of employees designated to take responsibility for various roles in the event of an emergency evacuation of a building.
H. Assist supervisors in educating employees on the Emergency Action Plans for each occupied building. Suggest appropriate updates to these plans.
I. Assist the SCC in creating and maintaining a Safety Committee website where safety guidelines and prepared safety information is available.
J. Suggest replacements for Committee members who can no longer serve.

2.3 Safety Committee Chairperson

The SCC will.

A. Organize and chair meetings of the Safety Committee.
B. Meet at least quarterly with supervisors to give updates on Committee activity and other safety issues.
C. Serve as the OPD liaison to the Department of Administration Safety Committee.

2.4 Human Resource Officer

The OPD Human Resource Officer will:

A. Work with the Safety Committee to make sure that appropriate safety information is provided during new employee orientation and other appropriate times. New employees are required to sign a statement that they have received the OPD Workplace Safety Policy.
B. Work with supervisors:
    1. To ensure that any documented special needs of employees regarding safety are met.
    2. Assist supervisors in including safety performance standards in performance appraisals by providing model language.
    3. Work with supervisors to ensure enforcement of safety standards and requirements are included in job profiles.
    4. Provide resource information to supervisors for office inspections by seeking assistance and training services from the Department of Labor and Industry's Employment Relations Division, the State Fund, the Risk Management and Tort Defense Division and worker's compensation program manager.
    5. Provide training to supervisors on how to report workplace accidents.
C. Serve as the main point of contact for reporting accidents to the State Fund and report all accidents to the State Fund within 48 hours.

2.5 Risk Management and Tort Defense Division

The Risk Management and Tort Defense Division will:

A. Assist the Safety Committee with risk management advice and training related to auto, property and other risks.
B. Provide suggestions regarding changes in practices, training, policies, and procedures as requested.

2.6 Office of the State Public Defender Supervisors

OPD Supervisors will:

A. Report workplace accidents and injuries to the Human Resource Officer within 24 hours on the "First Report of Injury" form. Additional forms may also be required.

B. Actively participate in safety training and keep abreast of safety initiatives. Work with Safety Committee members concerning the Emergency Action Plan. Conduct safety inspections of the work area. Monitor and address work place issues for obvious safety hazards. This document can be edited to meet the requirements of individual offices.
C. Encourage employees to feel free to report any potential safety problems or change in process that would make the job or work space safer.
D. Ensure employees receive, and discuss with them, prepared workplace safety information.
E. Ensure that new employees or employees new to a specific job receive safety orientation on how to conduct their jobs safely.
F. Ensure that personal protective equipment is used by employees and that it is available, maintained, and replaced when necessary.
G. Ensure that emergency contact information and General Services Division (GSD) Safety Guidelines are available to employees. Current GSD Safety Guidelines can be found here. .
H. Work with the Human Resources Officer to ensure that safety performance is part of each employee's written performance appraisal and job profile.
I. Supervisors will perform safety inspections, at least quarterly, of offices.

2.7 Office of the State Public Defender Employees

Every employee of the Office of the State Public Defender is responsible to maintain an awareness of safety concerns, use common sense and comply with all state and federal safety and health regulations and policies.

OPD Employees will:

A. Participate in new employee orientation as required at time-of-hire.
B. Participate in on-the-job safety training.
C. Report incidents and accidents to their supervisor or designee, regardless if medical attention is required. The "First Report of Injury" form must be completed by the employee and supervisor within 24 hours of the incident or accident.
D. Assist in accident investigations and early-return-to-work programs.
E. Participate in Safety Committee meetings when requested.
F. Use required personal protective equipment.
G. Report safety hazards to supervisor and/or safety representative.

3.0 PROCEDURES

Employees and Supervisors must regularly check for and take appropriate action to provide for a safe work environment:

A. Obstruction of fire exits
B. Misuse of heating appliances
C. Overloading of electrical circuits and plug-ins
D. Electrical hazards
E. Proper illumination for exit signs
F. Excessive flammables stored in offices
G. Excessive clutter in offices or storage spaces
H. Blocked hallways

4.0 APPENDICES

All appendices listed in this policy can be found on the Office of the State Public Defender Intranet site. For assistance in locating this site, please contact your supervisor, network support personnel or the Human Resource Officer.

5.0 CROSS-REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to this policy. The list should not be considered exhaustive; other policies may apply.

5.1 Federal Laws

Family Medical Leave Act
Americans with Disabilities Act

5.2 State Laws

Section 39-71-101 – 39-71-123, MCA	Compensation Act
Section 39-71-1505, MCA	Safety Culture Act
Section 49-10101 – 49-4-501, MCA	Montana Human Rights Act

5.3 State Policies (Montana Operations Manual)

MOM 3-0335 Annual Vacation Leave
MOM 3-0310 Sick Leave
MOM 3-0311 Sick Leave Fund
MOM 3-0315 Disability and Maternity
MOM 3-0320 Disaster and Emergency Leave
MOM 3-0330 Leave of Absence Without Pay
MOM 3-0130 Discipline Handling Policy

State of Montana Capitol Complex Disaster and Emergency Plan (available from the General Services Division)

6.0 CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination. Any violations of this policy should be reported to your supervisor or the Human Resource Officer.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

ATTACHMENT A

WORKPLACE SAFETY ACKNOWLEDGEMENT FORM

By signing this form I acknowledge that I have read the "Workplace Safety" policy and I understand that I am bound by the requirements in that policy.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: _____

SIGNATURE: _____

DATED: _____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Human Resource Policies

Subject: **Drug-Free Workplace**	Policy No.: **531**
Title:	Pages: **2**
Section:	Last Review Date:
Effective Date: **7-15-10**	Revision Date:

1.0 POLICY

The Office of the State Public Defender (OPD) is committed to a drug-free workplace. It is the policy of OPD and the State of Montana that the unlawful manufacture, distribution, dispensing, possession, use or solicitation of a controlled substance by any employee in the workplace is prohibited.

2.0 PROCEDURE

2.1 In compliance with the Drug-Free Workplace Act, an employee who is performing work under a covered federal grant will:

2.1.1 Abide by the terms of the state's policy statement requiring a drug-free workplace; and

2.1.2 Notify the agency of any conviction of a criminal drug statute which is the result of a violation which occurred in the workplace. The agency must be notified no later than five days after the conviction.

2.2 OPD shall take one of the following actions within 30 days of receiving notice of a conviction from an employee:

2.2.1 Take appropriate action against the employee, up to and including discharge; or

2.2.2 Require such employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program. Drug counseling and rehabilitation may be covered by the Employee Group Benefits Plan. The State Health Care and Benefits Division should be contacted for further information on specific coverage. The State benefits plan also provides an employee assistance program.

2.3 An employee who violates this prohibition is subject to disciplinary action, up to and including discharge, as provided in the Discipline Handling Policy, ARM 2.21.6505 et seq.

2.4 Each employee working under a federal grant, as defined in the Drug-Free Workplace Act of 1988, must receive a copy of this policy.

3.0 CLOSING

This policy statement is adopted in compliance with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D).

Questions about this policy should be directed to the OPD Human Resource Officer at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

DRUG-FREE WORKPLACE ACKNOWLEDGEMENT FORM

My signature below indicates that I have received a copy of the Drug-Free Workplace Policy and memorandum addressed to Office of the State Public Defender employees explaining the requirements of the act.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: _____

Employment Location: indicate below the office street address, city, state, zip code, and county.

_____

Office

_____

Street Address

_____

City, State and Zip Code

_____

County

SIGNATURE: _____

DATED: _____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	Release of Information	Policy No.:	535
Title		Pages:	5
Section:		Revision Date:	11-17-08
Effective Date:	9-1-07	Effective Date:	11-17-08

1. POLICY

1.1 It is the purpose of this policy to establish guidelines for the release of accurate and timely information of concern to clients; judges; attorneys; co-workers; city, county, and state agency personnel; and the public, which balances the right to know and an individual's right to privacy.

1.1.1 Right to Know: No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. *(Article II, section 9 of the Montana Constitution)*

1.1.2 Right to Privacy: The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. *(Article II, section 10 of the Montana Constitution)*

1.2 Employees must be careful not to disseminate confidential information. Employees are to refer questions relating to a specific client and/or case to the attorney representing the client. Release of information relating to employees is to be referred to the supervisor or the Human Resource Officer.

1.3 All Office of the State Public Defender (OPD) employees are required to acknowledge that they understand and will adhere to this policy by signing the Confidentiality Agreement (Attachment A).

2. DEFINITIONS

2.1 "Public Information" is defined as information that is not designated as confidential by State or Federal law.

2.2 "Confidential Information" includes verbal, written or computerized information and may include, but is not limited to, client records, notes of discussions with clients, attorney-client privileged information, medical records, case strategy, addresses, social security numbers, birth dates, financial information, billing statements, personnel records, verbal conversations concerning clients or co-workers where confidential information is discussed. Confidential information does not include information authorized to be disclosed by attorneys, or employees disclosing information based on the direction of an attorney, in

compliance with the Montana Rules of Professional Conduct.

2.3 "Employee" is defined as a volunteer, temporary, short term, student intern or permanent employee of the state.

3. PROCEDURES

3.1 General

Employees may be asked to respond to information requests from clients; judges; attorneys; co-workers; city, county and state agency personnel; or the public. Requests received, processed and maintained by the Office of the State Public Defender must be treated as confidential. OPD clients and employees are entitled to a high degree of confidence that information furnished to the agency is protected against unauthorized use, inspection or disclosure. Thus, employees handling confidential or sensitive information must always exercise caution.

Information which is of public record is to be disseminated in a timely and polite manner. Questions are to be referred to your supervisor.

Confidential information requests must be referred to the supervisor or to the attorney familiar with the specific client or case.

3.2 Client Information

Employees can not disclose confidential information regarding clients to *anyone except the client,* unless the client has completed a signed Release, the Release is on file with the Office of the State Public Defender, and the employee has obtained approval from either the supervisor or the client's assigned attorney. This includes, but is not limited to, family members, current or former spouses, significant others, individuals claiming to have power of attorney, and friends.

Employees other than attorneys shall not provide the public or any individual with legal advice.

Employees, except for attorneys or employees acting at the direction of an attorney, shall refrain from making public comment when asked about specific clients or cases, pursuant to the Montana Rules of Professional Conduct.

3.3 Employee Information

3.3.1 CONFIDENTIAL EMPLOYEE INFORMATION

Information requested by other State agencies, State employees, co-workers or the general public concerning issues relating to an employee (including, but not limited to, information relating to payroll, benefit payments, recruitment and selection, performance appraisal, disciplinary action, grievances, reduction in work force, disabled person's employment preference, veteran's employment preference, or medical information) must be treated as confidential information which may require authorization from the employee, a constitutionally valid legal order, or specific statutory authority to release the information. Questions regarding these requests are to be referred to the Human Resource Officer prior to the release of any information.

3.3.2 PUBLIC EMPLOYEE INFORMATION

An employee's position title, dates and duration of employment, salary, and claims for vacation, holiday or sick leave pay are public information and must be released on request. The Office of the State Public Defender may require that the request be in writing but may not require justification for the request.

3.3.3 REFERENCE CHECKS

Employees or supervisors contacted by other employers regarding current or former employee references are to refer the inquiry to the Human Resource Officer.

3.3 Media

Employees contacted by the media regarding issues specific to a client or case are to refer the inquiry to the supervisor or the attorney handling the case.

Questions regarding policy issues are to be forwarded to the Managing Attorney, the Regional Deputy Public Defender, or to the Chief Public Defender prior to responding to the request.

All contacts with the media are to be reported to the Chief Public Defender or the Administrative Director in the Central Office (496-6080).

3.4 Legislative Activities

3.4.1 REQUESTS FROM LEGISLATORS

To help ensure that requests from legislators or legislative staff are fulfilled promptly, thoroughly and accurately, an employee receiving a request from a legislator or legislative staff must notify their immediate supervisor as soon as possible. Supervisors must notify the Central Office of all such requests as soon as possible. It may be necessary for the Central Office to contact the Governor's office for policy guidance before responding to a request.

3.4.2 LOBBYING

Employees who are not registered as lobbyists are not to attend committee hearings or floor sessions on State time unless requested or approved by the Chief Public Defender.

An employee who lobbies on his or her own behalf during regular working hours must take annual leave, compensatory time or leave without pay to do so. An employee involved in personal lobbying or attending hearings who identifies him or herself as a state employee must state that they are not representing the agency and that they are on approved leave. An employee lobbying on their own behalf may not release information obtained as an employee of the Office of the State Public Defender.

A bargaining unit employee who attends committee hearings or floor sessions at the request of the union must notify the Chief Public Defender

that they will be in attendance. An employee who attends on behalf of the union during regular working hours must take annual leave, compensatory time or leave without pay to do so. An employee involved in lobbying or attending hearings who identifies him or herself as a state employee must state that they are not representing the agency and that they are on approved leave.

3.5 Requests Related to Electronic Information

Employees are liable for any misuse of information obtained using their computer user ID (CM number) or password. Passwords are confidential and are not to be shared with anyone, including IT staff.

3.6 Regional and Local Offices

Procedures for individual Regional or Public Defender Offices may exist to define specific guidelines for requests for information. This policy does not change those procedures, but is meant to cover areas that do not have more specific procedures.

4. CROSS-REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might pertain to a decision relating to public information. The list should not be considered exhaustive; other policies may apply.

4.1 State Laws

Montana Constitution Article II, Sections 8, 9, and 10.
Montana Criminal Justice Information Act, MCA 44-5-101 to 311

4.2 State Policies (Montana Operations Manual)

MOM 3-0165 Recruitment & Selection
MOM 3-0110 Employee Record Keeping

5. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions regarding this policy can be directed to your supervisor or the Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

Phone (406) 496-6091

ATTACHMENT A

Confidentiality Agreement

As an employee of the Office of the State Public Defender (OPD) you may have access to confidential information regarding clients and co-workers. It is critical for OPD employees to maintain confidentiality at all times. Confidential information regarding clients and co-workers includes, but is not limited to, written or computerized client records, notes of discussions with clients, attorney-client privileged information, medical records, case strategy, addresses, social security numbers, birth dates, financial information, billing statements, personnel records, or verbal conversations concerning clients or co-workers where confidential information is discussed.

The Office of the State Public Defender is committed to complying with the Constitution of the State of Montana, specifically Article II, Section 8, Right of Participation; Article II, Section 9, Right to Know; Article II, Section 10, Right of Privacy; Montana Criminal Justice Information Act, MCA 44-5-101 to 311; Health Insurance Portability and Accountability Act (HIPAA), Rules of Professional Conduct, and other State and Federal laws protecting clients' or co-workers' privacy.

Violation of the provisions of State and/or Federal Law can result in civil and/or criminal penalties as well as disciplinary action up to and including termination of employment.

Guidelines for maintaining confidentiality:

1. Access only those records you need to perform your duties or as authorized by your supervisor.
2. Do not share or discuss confidential information you access or become aware of regarding clients or co-workers, except for work-related reasons and with the appropriate individuals.
3. Do not repeat conversations regarding clients or co-workers to anyone, whether internal or external to the Office of the State Public Defender, except for work-related reasons.
4. Do not provide any confidential information to the general public when asked about specific clients or cases.
5. Provide confidential information only to those persons who are authorized to receive it.
6. If you have questions about whether specific information is public or private, contact your supervisor, the attorney assigned to a case, or the Human Resource Officer (496-6091).

Acknowledgement:
I understand that if I am volunteer, temporary, short term or student intern worker in the Office of the State Public Defender I am bound by the same laws on confidentiality as if I were a permanent employee.

My signature indicates that I have read and understand the Office of the State Public Defender employee guidelines regarding confidentiality, and I agree to abide by these guidelines. I understand that unauthorized use or disclosure of confidential information concerning clients, or personal information regarding co-workers, to any unauthorized person internal or external to the Office of the State Public Defender, violates confidentiality and or legal ethics. I also understand the penalties for non-compliance.

_____ _____
Printed Employee name Date

This form must be signed and returned to:
Office of the State Public Defender, Human Resource Office
44 West Park
Butte, MT 59701
(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Broadband Pay Plan	Policy No.: 540
Title	Pages: 12
Section:	Last Review Date:
Effective Date: 5-21-09	Revision Date:

1. **Purpose**
   The purpose of this policy is to establish consistent application of the Broadband Pay Plan in accordance with 2-18-301 through 2-18-303, MCA.

2. **Scope**
   This policy applies to all Office of the State Public Defender (OPD) employees excluding positions listed under 2-18-103 MCA: the chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender.

   If this policy conflicts with collective bargaining agreements, the collective bargaining agreements take precedence.

3. **Objective**
   The Office of the State Public Defender (OPD) believes that competent employees are a critical component in the agency's ability to fulfill its mission and goals, and that the Broadband Pay Plan will enhance employees' opportunities for rewards and recognition. Market factors, employee competence and contributions should be important considerations in determining compensation that is fair and equitable. The main objectives of the OPD Broadband Pay Plan are to be internally equitable, externally competitive and sufficiently motivating to more closely reflect an employee's true value to the organization; to provide a closer relationship to the marketplace; and recognize knowledge and performance levels that contribute to the agency mission, dependent upon OPD's ability to fund pay adjustments based on legislative appropriation.

4. **Definitions**
   The following definitions apply to this pay plan policy:

   4.1 Agency – Office of the State Public Defender (OPD).

   4.2 Agency Head – the Chief Public Defender.

   4.3 Appointing Authority – an agency official or designee with the delegated authority to hire or discharge employees.

4.4 Base Salary – the amount of compensation paid to an employee, excluding: state contributions to group benefits provided in 2-18-703 MCA; overtime; fringe benefits as defined in 39-2-903 MCA and longevity allowance provided in 2-18-304 MCA.

4.5 Bonus – a lump-sum payment that does not affect the employee's base pay.

4.6 Break in Service – a period of time in excess of five working days between state employments.

4.7 Broadband Pay Plan – a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.

4.8 Classification – a process of evaluating the work performed in a given job to determine the appropriate occupation and pay band.

4.9 Classified Position – an executive branch position subject to this broadband pay policy.

4.10 Competencies – sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a job.

4.11 Competency Pay – a wage adjustment type based on job-related competencies considered to be a benefit to the agency.

4.12 Competitive Pay Zone – means that portion of the pay range for a band level of an occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation.

4.13 Demotion – assigning an employee to an occupation with a lower pay range or a lower pay band.

4.14 Department – the department of administration.

4.15 Entry Salary – the entry-level base salary for each occupation will be 20 percent below the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.

4.16 Longevity Allowance – a salary increase of 1.5% or 2.0% times the base salary for each completed five years of contiguous, uninterrupted state service, as provided in 2-18-304 MCA.

4.17 Market Pay – a wage adjustment type up to 100% of the market salary for

that occupation. Market pay adjustments are determined by the OPD pay plan.

4.18 Market Salary – the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.

4.19 Maximum Salary – the maximum level base salary for each occupation will be 20 percent above the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.

4.20 New Hire – an individual who has never worked for state government or a previous state employee returning after a break in service of more than five working days.

4.21 Non-Classified Position – an executive branch position not subject to this Broadband Pay Plan policy.

4.22 Occupation – a generalized family of jobs having substantially similar duties and requiring similar qualifications, education and experience.

4.23 Occupation Job Code – the unique identifier of an occupation and pay band used by the department based on the Standard Occupational Classification (SOC) numbering convention, maintained by the U.S. Department of Labor, Bureau of Labor Statistics.

4.24 Pay Band – a wide salary range covering a number of different occupations.

4.25 Performance Pay – a wage adjustment type based upon the documented evaluation of the employee's performance.

4.26 Position – a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

4.27 Promotion – assigning an employee to an occupation with a higher pay range or a higher pay band.

4.28 Reclassification – assignment of a position from one occupational job code to another. Changes are based on a review of current duties and responsibilities.

4.29 Results Pay – a wage adjustment type given to an employee or an employee team based on measurable outcomes.

4.30 Situational Pay – a wage adjustment type based on atypical situations in the majority of jobs in state government.

4.31 Statutory Wage Adjustment – a wage adjustment authorized by law entitling all eligible state employees to receive the increase.

4.32 Strategic Pay – a wage adjustment type used to attract and retain an employee with competencies critical or vital to the achievement of an agency's mission or strategic goals.

4.33 Training Assignment – a period of employment created at an agency's discretion to allow a candidate to obtain the required knowledge, skills, and behaviors necessary to perform all of the duties of a job.

4.34 Transfer – a change of employment including but not limited to inter-agency or intra-agency changes or movement from non-classified to classified positions without a break in service.

5. **Occupations and Market Salary Information**
OPD will use the occupations and market salary information established by the State Human Resources Division and union contract. OPD will be proactive in working with the State Human Resources Division and Labor Relations to ensure that markets are appropriate for occupations employed by OPD.

6. **Establishing Wage Rates**
The Broadband Pay Plan allows agencies to address pay issues such as internal equity, external competitiveness, and recognition for employee contributions and added job competencies. Pay decisions must be fiscally responsible using the following guidelines.

6.1 New Hires
Typically, new employees are placed in the pay band for the occupation according to the candidate's qualifications in relation to the job profile requirements and agency salary relationships. Entry is meeting the minimum of the job profile requirement. Additional qualifications and work experience can be considered to place the candidate between entry and market. When determining the employee's base pay, the agency shall consider criteria including but not limited to:

1. The employee's job-related qualifications and competencies
2. Existing salary relationships within the occupation; work unit; and agency
3. The agency's ability to pay
4. The competitive labor market

Questions to be considered when establishing the wage offer include:

5. Whether the applicant's education, training and/or work experience exceed the minimum qualifications required based on the job profile.
6. Are there recruitment problems associated with filling positions in this occupation or location?
7. How unique is the position or applicant in terms of training and experience?
8. Are there other special circumstances such as previous employment with OPD but had a break in service?
9. What is the effect on current employees in the same job title? Do the differences in qualifications and performance justify a salary difference? (This must be addressed in every situation.)

Strategic, market-based and situational pay components may be used when retention is a problem, recruitment of qualified candidates has been difficult, or supervisors have been unable to attract candidates into positions (see section 7). Written justification addressing the above questions must be provided to use these components and must be submitted to the Human Resource Officer for approval by the Chief Public Defender and the Administrative Director prior to an offer being made to the successful candidate.

6.2 Training Assignments

1. OPD may use a training assignment to address recruitment, transfer, reorganization or promotion interests.
2. Training assignments may not last more than two years.
3. Employees in a training assignment may be paid below the entry salary.
4. Conditions of the training assignment will be stated in writing and signed by the employee, supervisor and Human Resource Officer. A copy of the written training assignment will be filed in the employee's permanent personnel record and must include:
    a. the wage rate at the beginning of the training assignment, any increases allowed during the training assignment and the wage rate at the end of the training assignment;
    b. the duration of the training assignment;
    c. the knowledge, skills, behaviors, training and experience the employee must acquire during the training assignment; and
    d. measures of the employee's performance in areas where knowledge, skills, behaviors, training and experience must be acquired by the employee.

5. At the completion of the training assignment, the employee's base salary will be set according to the agency pay plan.

6. If the employee does not satisfactorily complete the training assignment, the agency may:
    a. return the employee to the position held before the training assignment;
    b. assign the employee to another position for which the employee is qualified;
    c. extend the training assignment for a period not to exceed two years; or
    d. discharge the employee, in compliance with the Discipline Policy, ARM 2.21.6505 et seq. If the employee is under a probationary period discharge must be in compliance with ARM 2.21.3810.

6.3 Supervisory Pay

Employees may be eligible for additional pay when performing supervisory duties. When an employee who is performing supervisory duties is classified in the same occupation and band as their subordinates, OPD may recognize these additional duties with a pay adjustment approved by the Chief Public Defender. When determining the amount of additional pay, the agency will consider levels of supervisory duties performed and internal equity.

6.4 Promotions

A promotion is the advancement of an individual to an occupation with a higher pay range, either within a band or to a higher-level band, based on qualifications and a significant change in work content. The salary of an employee being promoted to a higher occupation or higher pay band will normally be set by considering the employee's relative job-related qualifications (experience, knowledge, skills and abilities). The salary of a promoted employee will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity.

6.5 Temporary Promotions

Pay for temporarily assigned duties which require additional competencies must be based on an assessment of the additional competencies required in the temporary assignment. The salary of an employee who is temporarily promoted will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity.

An employee placed in a temporary assignment must be given written notice of the assignment. The notice must contain the length of time the assignment is anticipated to last and include the date the temporary promotion takes effect. The temporary assignment may not exceed two

years. Upon completion of the temporary assignment, the employee's pay will be set at the base salary they had prior to the temporary promotion, plus any scheduled salary increases that may have occurred during the temporary assignment.

6.6 Demotions

The base salary for an employee moving to a lower occupation or lower pay band will normally be set by considering the employee's relative job-related qualifications (experience, knowledge, skills and abilities). The salary of an employee who is demoted will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity. The new base salary will not be less than the entry rate for the pay band unless a training assignment has been established under 6.2.

OPD may at its discretion protect the employee's current base salary for a period not to exceed 180 calendar days. The Regional Deputy Public Defender or supervisor must submit a request to the Human Resource Officer, for approval by the Chief Public Defender, to protect the employee's current base salary for up to 180 calendar days. At the end of the protected period, if applicable, the agency must set the employee's base salary between entry up to the maximum of the new pay band.

The employee must be notified in writing of the wage rate prior to the change.

This rule does not apply to disciplinary and/or voluntary demotions.

6.7 Transfers

The salary for employees moving from one position to another at the same occupation and pay band will not change, unless the circumstances of the move involve strategic or situational pay components.

6.8 Classification

The Broadband Pay Plan has nine "broad bands." All positions are placed in an occupation and pay band using the Benchmark Factoring Method (BFM) and the state classification standards. This plan uses a single factor, complexity, which is applied to the predominant work performed in a position.

The pay bands and classification standards are designed so that an employee's salary will fall within the minimum and maximum salaries in the appropriate pay band. No employee is paid below entry unless they are in a training assignment.

Classification reviews of positions are reduced since the focus is on an employee's progression within the pay band. Competency pay, market pay, performance pay, results pay, and strategic pay components may be used to make these adjustments.

The Broadband Pay Plan allows OPD flexibility to ensure employees are compensated for increased duties and responsibilities, achievements, and demonstrated competencies.

When it is determined that an employee's salary should be adjusted within the pay band, the Regional Deputy Public Defender or supervisor must make a written request on the Wage Adjustment Request Form and forward the request to the Human Resource Officer.

Once the Wage Adjustment Request Form is received a review will be conducted of the employee's job-related qualifications and competencies; existing salary relationships within the agency, the agency's ability to pay, and internal equity. It will be the responsibility of the Chief Public Defender or the Administrative Director to approve or deny the request prior to implementation.

6.9 Reclassification

In the rare circumstance when reclassification of a position is considered, the Regional Deputy Public Defender and supervisor will make a written request for a position review to the Human Resource Officer. Supervisors will be required to submit an electronic copy of an updated job profile. Once the job profile is received by the Human Resource Officer, a review of the position will be conducted to determine the proper occupation and pay band placement. Once the review is completed the Human Resource Officer will forward a recommendation to the Regional Deputy Public Defender, supervisor and the Chief Public Defender for approval.

Compensation for a reclassified position will be determined using the same process and criteria as outlined in the sections titled “Demotions” and "Promotions."

6.10 Change from Non-Classified Position to Classified Position

When an employee's position is changed from non-classified to classified, OPD may set the base salary within a range from the entry rate of the classified occupation up to a base salary that maintains the employee's current base salary as long as it is within the pay range established for the newly-assigned occupation.

OPD may at its discretion protect the employee's current base salary for a period not to exceed 180 calendar days. The Regional Deputy Public Defender or supervisor must submit a request to the Human Resource

Officer, for approval by the Chief Public Defender, to protect the employee's current base salary. At the end of the protected period, if applicable, the agency must set the employee's base salary between entry up to the maximum of the new pay band.

The employee must be notified in writing of the wage rate prior to the change.

7. Wage Adjustment Types

Wage adjustments must be approved by the Chief Public Defender or the Administrative Director and properly recorded in SABHRS. The following wage adjustments may be given based upon the availability of agency funds:

7.1 Competency Pay

Employees may be eligible to receive additional pay based on their competency. Competencies must be identifiable, observable, measurable and compared to like positions for internal equity purposes. Competency pay may be given as a bonus or as an increase to the base salary.

7.2 Market Pay

Employees whose base salary is below the market salary for their occupation may be eligible for a market pay adjustment. Market pay adjustments may be used to address recruitment and retention issues. Market pay adjustments should not be used to increase an employee's wage above the market of their occupation. An employee's wage may be adjusted above the market rate using one or more of the other wage adjustment types.

7.3 Performance Pay

Employees may be eligible to receive additional pay based on their performance. Prior to implementing performance pay, a performance appraisal tool must be in place that has been approved by the Chief Public Defender or designee. This increase is based on the agency's ability to pay, performance criteria linked to actual results compared with expected results, and internal equity. Performance pay may be given as a bonus or as an increase to the base salary.

7.4 Results Pay

Employees may be eligible to receive additional pay based on the results of their efforts and/or team efforts which can be measured by comparing accomplishments to established goals. Results pay must be given as a bonus.

7.5 Situational Pay

Employees may be eligible to receive additional pay based on atypical situations or working conditions. OPD may use situational pay to address

recruitment or retention issues related to certain requirements of the position such as location, extensive travel, unusual work hours, or unusual physical demands. Situational pay may be given as a bonus or as an increase to the base salary.

7.6 Strategic Pay
Employees may be eligible to receive additional pay based on the agency's strategy to recruit or retain critical or vital competencies. Strategic pay may be given as a bonus or as an increase to the base salary.

8. Longevity Allowance

A longevity allowance must be added to an employee's hourly base salary on the first day of the pay period in which eligibility occurs. The longevity allowance is calculated after all other wage adjustments have been added to the employee's base salary.

9. Effective Dates For Pay

The effective date for pay actions will be the first day of the pay period in which the request for a reclassification or pay adjustment has been approved by the Chief Public Defender or the Administrative Director.

10. Ensuring Equity Across the Agency

OPD has developed several review processes and criteria to ensure consistency and compliance in the application of the competency based performance management and compensation system. OPD will implement this system in compliance with state and federal laws and according to the requirements of the Montana Operations Manual (MOM) 3-0115, the State Performance Management and Evaluation Policy; MOM 3-05-1, the Broadband Pay Plan Policy; Collective Bargaining Agreements with AFSCME; MCA 2-18-303 and MCA 39-31-305.

To ensure equity across the agency, the Chief Public Defender, Regional Deputy Public Defenders, the Administrative Director and the Human Resource Officer will review all pay component requests prior to implementation.

Requests for pay adjustments will be accompanied by a performance review conducted within the last 12 months. The request will depict how the employee meets or exceeds expectations. A statement indicating how the pay increase impacts the budget will also be required.

11. Performance Management

OPD intends to use the performance management system as a way to promote employee growth and offer opportunities for competency related feedback. Through utilizing dependable performance management tools, supervisors and employees will be able to identify areas of strength and weakness in an

employee's performance. Then, employees can be rewarded for their strengths and offered training opportunities to improve areas of weakness.

Recognizing that employees desire development opportunities, OPD is committed to providing the training foundation necessary for employees to evolve in their profession. Training opportunities for employees will be an integral part of the OPD strategic plan.

OPD supervisors will provide regular, effective performance communication.

OPD intends to use the performance communication process as a way to provide worthwhile feedback to employees. This feedback will indicate performance in regard to the position's work, competencies required, meeting proficiency levels and addressing employee development.

The result will be:

- Employee and supervisor understanding and documenting the performance of the employee
- Identifying development needs and desires of the employee and supervisor
- Defining work goals and objectives for the coming year for the employee

OPD has established a performance appraisal review process to ensure consistency and objectivity in the application of the performance management tools. Performance expectations are documented in the appraisal form and the evaluator is required to provide written comments (including specific examples) on ratings where the employee does not exhibit a specific behavior or exceeds expectations. The plan includes weighted factors for reaching evaluation decisions.

The employee's immediate supervisor will complete the initial evaluation. The employee will be allowed 10 working days from the date of the evaluation to submit a written response if they so choose. Responses will be retained with the evaluation in the employee's personnel file. As stated in MOM-3-0115, the State Performance Management and Evaluation Policy, no employee may file a grievance based on the content of a performance management plan, the evaluation, or the reviewer's comments.

The completed performance appraisal will be reviewed by OPD management to ensure consistency and objectivity in the evaluations. OPD supervisors will be held accountable for completing appropriate performance evaluations (including periodic feedback) through the performance evaluation process. OPD is also committed to providing training and technical assistance to employees and management in the implementation and administration of the competency based performance management and compensation system through supervisory training and assistance provided by the Human Resource Office.

OPD will develop a system that summarizes performance with an overall rating. OPD will maintain statistics to ensure there are no adverse impacts on protected classes or other inconsistencies.

12. CROSS REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to the Broadband Pay Plan. The list should not be considered exhaustive—other policies may apply.

State Laws

2-18-303 MCA	Procedures for administering broadband pay plan.
39-31-305 MCA	Duty to bargain collectively -- good faith.

State Personnel Policies

MOM 3-0115	State Performance Management and Evaluation Policy
MOM 3-05-1	Broadband Pay Plan Policy

13. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions concerning this policy can be directed to your immediate supervisor or the Human Resource Office at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

STANDARDS

for Counsel
Representing Individuals
Pursuant to the Montana Public
Defender Act

OCTOBER 2010

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Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act

I. INTRODUCTION

1. Purpose:

These standards are intended to encourage and allow attorneys representing indigent and all other persons entitled to public legal representation to perform to a high standard of representation and to promote excellence and professionalism in the representation of those persons. The following standards are adopted to foster a legal representation system in which:

A. The public legal representation function, including the selection, funding, and payment of counsel for indigent clients, is as independent from political influence and judicial supervision as possible given the geographic and demographic diversity of the State of Montana;

B. Those persons entitled to public legal representation are adequately represented through a legal services delivery system consisting of defender offices, the active participation of the private bar, or both;

C. Applicants requesting legal services based upon indigence are screened for eligibility based upon uniform standards, then assigned and notified of an appointment as soon as is practically possible;

D. Counsel has sufficient time, confidential space, and confidential electronic communications to converse with the client;

E. Counsel's workload matches counsel's capability;

F. Counsel's ability, training, and experience match the complexity of the case;

G. To the extent possible, the same attorney continuously represents the client until completion of the case;

H. Counsel for a client entitled to public legal representation has parity of resources with opposing counsel and is included as an equal partner in the justice system; and,

I. Counsel is required to obtain continuing legal education and training.

2. Application:

A. These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of counsel to determine the effectiveness of representation. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

B. These standards apply generally to all counsel who represent persons at state expense pursuant to the Montana Public Defender Act. In cases where these standards conflict with or contradict the standards established for representation in certain specific types of cases, the more specific standards shall apply.

3. Discrimination:

A. No government agency or any entity contracting with a government agency, in its selection of an attorney, firm, or agency to provide public legal representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the basis of race, color, religion, national origin, age, marital status, sex, sexual orientation or disability. Government entities, defender offices, contract counsel, and assigned counsel shall comply with all federal, state, and local non-discrimination laws.

II. CASE SELECTION

1. Nature of Case:

A. Counsel may be assigned to represent persons in all cases as described in the Montana Public Defender Act and in any other case deemed appropriate by the Montana Supreme Court.

2. Publicizing of Services:

A. The availability of public defender services should be publicized by the Office of the State Public Defender, regional public defender offices, and local public defender offices. Reasonable efforts should be made to ensure that notices containing information about public defender services and how to access those services are posted conspicuously in police stations, jails and wherever else it is likely to give effective notice.

III. THE ATTORNEY-CLIENT RELATIONSHIP

1. Nature of Representation:

Goal: The paramount obligation of counsel is to provide quality representation and diligent advocacy to the client at all stages of the representation.

A. To provide quality representation and diligent advocacy, counsel must preserve, protect, and promote the client's rights and interests, and be loyal to the client.

B. Public defenders, contract counsel, shall provide services to all clients in a professional, skilled manner consistent with the Montana Rules of Professional Conduct, case law, applicable court rules defining the duties of counsel and the rights of their clients, and these Standards.

2. Initial Contact:

Goal: Counsel shall be made available to indigent defendants at the earliest opportunity.

A. Effective representation should be available to an eligible person upon request of the person, or someone acting on the person's behalf, to a court, a public defender office, or contract counsel as soon as the person is under investigation, arrested, charged with a criminal offense, becomes a party to any litigation in which the person is entitled to public legal representation, or when the interests of justice require representation. This standard does not create a duty of counsel to provide indigent legal representation to a person beyond those duties imposed by statutes and case law.

B. A person not in custody shall be advised of the right to representation and, if eligible, offered the services of counsel at the person's first appearance before a judicial officer. Assigned counsel shall make an appointment at counsel's earliest convenience, prior to the next court appearance, to personally meet with any prospective client. A person in custody who is not represented by retained counsel shall be entitled to consult with a public defender for not less than fifteen minutes prior to his or her first court appearance. If feasible, counsel should offer representation for the initial appearance for the purposes of making a bond argument. When a court incarcerates a person who appears before it and that person requests indigent representation, counsel shall make personal contact with the person within three working days.

C. When it is determined that a person is ineligible for public legal representation, counsel should decline the case and advise the person of how to appeal the determination of ineligibility. However, should immediate service be necessary to protect that person's interests, such service should be rendered until the person has the opportunity to retain counsel. In that event, the Office of the State Public Defender shall be reimbursed for counsel's services at the current hourly rate for contract counsel.

3. Duration of Representation:

Goal: Once a case is assigned to an attorney, continuous and uninterrupted representation by the same attorney is the most effective method of representation.

A. Counsel shall provide continuous and uninterrupted representation to eligible clients from time of entry into the case through final disposition in the trial court. The Appellate Defender's Office shall provide appellate representation before the Montana Supreme Court.

B. In the event that counsel is no longer employed by a public defender office or private counsel no longer does cases for the Office of the State Public Defender (OPD), either the Regional Deputy Public Defender or Contract Coordinator, in his or her discretion, may direct that counsel shall continue to represent the client through final disposition of the case at the rate of compensation for assigned counsel set forth in these Standards. Completion of a client's case shall not be required if counsel is unable to continue representation or is relocating to a residence outside the Region. These Standards shall not prohibit counsel from withdrawing from a case in which a court has recognized a conflict of interest for counsel or in which a client is found to be ineligible for indigent legal services.

C. In the event that a court should deem it appropriate to set an evidentiary hearing on a *pro se* petition for postconviction relief, the Office of the State Public Defender shall assign previously assigned counsel for the petitioner, unless the petition raises an issue of ineffective assistance of counsel. Ineffective assistance of counsel shall be handled by the Office of the Appellate Defender.

4. Conflicts of Interest::

Goal: The duty of loyalty to the client is paramount.

A. Organization of the State Public Defender System: The State Public Defender System is made up of eleven Regional Public Defender Offices, the Office of the Appellate Defender, the Major Crimes Unit, and various local offices and contract attorneys. The Office of the Appellate Defender is independent from all trial division offices.

Each local office is under the direct supervision of a Regional Deputy Public Defender. The Major Crimes Unit is under the direct supervision of a manager who is responsible for directing, coordinating, and evaluating the work of attorneys employed in the unit. The Major Crimes Unit manager is solely responsible for providing guidance to and determining litigation strategy for attorneys assigned to his supervision. The Regional Deputy Public Defenders are responsible for directing, coordinating, and evaluating the work of attorneys employed in the local office and any contract attorneys

that are also assigned to his or her overall supervision. The Regional Deputy Public Defenders are solely responsible for providing guidance to and determining litigation strategy for attorneys assigned to their supervision.

Each regional office and the Major Crimes Unit has its own support staff and investigators separate from those employed by any other independent office. Each office is physically separate from the others. No supervisor or staff from one independent office has access to files or premises of another independent office. However, a supervisor or staff from a regional office has access to the files and premises of a local office that is under that regional office's supervision. Each office has its own phone numbers, facsimile equipment, and computers. Although computer networks will be linked for purposes of reporting statistical information, confidential client information shall be separated by appropriate firewalls or other screening devices.

Neither the Chief Public Defender nor anyone assigned to the State Public Defender System administrative division exercises general control or influence over the handling of individual trial division or appellate division cases, has access to client files or client confidences, has keys to any independent office, or has unsupervised access to the premises of any independent office. The Chief Public Defender, the Training Officer, and the Contract Officer will take cases as assigned. The only other exception to this rule is for major litigation cases in which the State Public Defender's office may provide assistance through its Major Crimes Unit. While the Office of the State Public Defender must sign off on all expenditures and coordinate in advance on some expenditures for expert witnesses, certain other investigative assistance, and equipment purchases, these requirements are only to ensure compliance with State disbursement procedures and promote sound fiscal practices; they do not dictate trial strategy, which remains the exclusive province of the Regional Public Defender's Office or Major Crimes Unit.

B. State Public Defender System Organization and Conflicts of Interest: Each independent regional office, including any local office under its supervision, is a separate "firm" for purposes of representing clients. The Major Crimes Unit is a separate "firm" for purposes of representing clients. Accordingly, a client with a conflict of interest with one regional office may be represented by another regional office or the Major Crimes Unit. In such an event, the client shall be screened through appropriate devices and procedures from having contact with any confidential information concerning any other case in the conflicting region. A local office may not represent a client in conflict with a client of its regional parent office, or vice versa.

The Office of the Appellate Defender is also a separate "firm" for purposes of client representation. The Office of the Appellate Defender may represent a client in conflict with a client of any regional or local office, or in conflict with any contract attorney. In representing the former client or a trial division office, the Office of the Appellate Defender may take the position that a regional or local office attorney, or a contract attorney, did not provide the client constitutionally effective assistance of counsel.

C. Examination for Potential Conflicts of Interest: Early detection of a potential conflict of interest is crucial to its appropriate resolution. As soon as is practicable following appointment to represent a client, a Regional Public Defender Office or the Major Crimes Unit must examine its records to determine whether it may have a conflict of interest involving another current or former client, or otherwise. An office must promptly update this examination as it investigates the case and receives discovery, with particular attention paid to finding out if conflicts may exist with anticipated witnesses for the prosecution or defense. In the event that a potential conflict of interest develops, the matter shall be referred to the Training Coordinator, who shall be provided sufficient facts to decide the issue.

Clients and potential witnesses may also have information that will assist in uncovering possible conflicts of interest. Accordingly, each local public defender office should use standard questions for its client intake interviews and witness interviews that are designed to uncover conflicts on forms developed by the State Public Defender's Office.

In a situation in which a public defender's office makes an initial appearance on behalf of codefendants, the clients must be cautioned at the first opportunity not to disclose confidential information concerning the case until a determination can be made if a conflict exists.

D. Policy and Guidance on Potential Conflicts of Interest: It is the policy of the Office of the State Public Defender that all State Public Defender System offices will comply with all legal requirements and ethical guidelines relating to conflicts of interest in the representation of clients. The Rules of Professional Conduct are mandatory authority. To the extent that this Standard may be interpreted as inconsistent with the Rules, the latter controls.

The difficulty in developing case-specific policies is that it is impossible to formulate rules that will apply in every situation. The following guidance contains examples of situations where conflicts are likely to result and others that are probably not conflicts of interest. This is not an exclusive list; however, this list contains many situations expected to arise in cases. Any potential conflicts must be resolved on a case-by-case basis.

E. Codefendants: Public defender offices within a region or the Major Crimes Unit will not represent codefendants except in rare situations when it is clear that each codefendant's interests are completely consistent with the others and each codefendant agrees. Even so, the better course of action is to represent only one codefendant. If possible, the regional public defender should keep one of the cases. If the public defender can make a choice of codefendants before obtaining privileged information from either one, the choice should be the codefendant with the most serious or difficult case. Otherwise, the local public defender should keep the first codefendant to which the office is appointed and make arrangements for other counsel for the other codefendant.

F. Simultaneous representation of a defendant and a potential prosecution witness or alleged victim: There will almost always be a conflict of interest in this situation. There may not be a conflict if the prosecution witness's credibility or the alleged victim's character is not at issue, and the prosecution witness' testimony is not a crucial factor in the defendant's case. This issue should always be referred to the Training Coordinator.

G. A former client is a potential prosecution witness or alleged victim: This is not a *per se* conflict of interest, but a conflict will often exist in this situation. There may not be a conflict of interest if the prosecution witness's credibility or the alleged victim's character is not at issue, and the prosecution witness's testimony is not a crucial factor in the defendant's case. In other cases, there may not be a conflict of interest if the local public defender's office has no privileged information about the former client that would be useful in representing the defendant.

H. Investigation reveals that another person may have committed the charged crime and that other person is a former client: This will almost always be a conflict of interest. This presents a conflict of interest if the local public defender's office has privileged information about the former client that would further the theory that the former client is the perpetrator.

I. An employee of the local public defender's office is a potential prosecution witness or an alleged victim: Either situation is a conflict of interest.

J. The defendant was convicted in a previous case while represented by the local public defender's office and has a colorable claim of ineffective assistance of counsel in that case: This presents a conflict of interest as long as the ineffective assistance claim is unresolved.

K. Situations that do not present *per se* conflicts of interest: The following are not *per se* conflicts of interest. However, if the particular situation actually degrades the quality of client representation or creates an appearance from which a reasonable person would doubt that a local public defender's office can exercise independent professional judgment on behalf of a client, a conflict would exist. The individual circumstances control. They include:

a. A dispute between client and attorney or other member of the local public defender's office staff.
b. A client refuses to follow an attorney's advice, unless it involves the commission of a future crime.
c. A client files a grievance against the attorney with the attorney's supervisor or the Office of Disciplinary Counsel. A client should not be allowed to manipulate appointment of counsel by filing a frivolous grievance against an assigned attorney. However, a non-frivolous grievance may create a conflict of interest. A client complaint, even if not creating a conflict of interest, should usually justify the local public defender in changing assigned counsel as a matter of supervisory discretion.

d. An alleged victim or potential prosecution witness has a friend or relative in the local public defender office.
e. A witness for the defense is a present or former client, unless there is a reasonable possibility the testimony could turn adverse to the defendant or the theory of defense may implicate the present or former client.
f. An employee of the public defender office is closely related by blood or marriage, is engaged to be married, or otherwise has a close relationship with an employee of a State, county, or city office that has prosecution, law enforcement, or child welfare responsibilities. Appropriate steps must be taken to disclose the relationship, ensure protection of privileged information, and reinforce confidence in the independent judgment and zealous representation of the public defender officer. A "close relationship" would include sharing a household and extended dating.
g. An employee of the public defender office is a former employee of a State, county, or city office that has prosecution, law enforcement, or child welfare responsibilities. However, if the former employee of such office participated personally and substantially in a case, the public defender office would have a conflict of interest and be disqualified. If the former employee of such office did not participate personally and substantially in the case, a timely deployed "ethical wall" will prevent disqualification of the public defender office.
h. An employee of the public defender office is a former employee of another public defender office or other law firm that represented clients in conflict with the public defender office where the employee is now employed. This situation sometimes occurs when Public Defender System employees transfer from one public Defender System office to another, and when personnel are hired from law firms that handle criminal or juvenile cases. Apply the same process as above.
i. An employee of the prosecutor's office is a former employee of the public defender's office. Apply the same process as above.
j. A public defender appears before a judge who is a former associate in the public defender office. In such cases, appearances before former associates are proper when there has been full disclosure.
k. An employee of the public defender office is closely related by blood or marriage, or is engaged to be married, to a judge before which the public defender office appears, or otherwise has a close relationship with a judge before which the public defender office appears. A "close relationship" would include sharing a household or extended dating. Such a relationship must be disclosed in any case where the public defender office appears before the judge and each party given the opportunity to request recusal.
l. A public defender has applied for or been offered a job in a state, county, or city office that has prosecution, law enforcement, or child welfare responsibilities, or is running for election as a prosecutor or law enforcement officer. In such cases, the Office of the State Public Defender may give the public defender and his or her supervisor guidance

concerning campaign ethics laws, the public defender's caseload, and other matters to ensure client and public confidence in the continued zealous advocacy by the public defender and the public defender office.

m. A public defender has applied for appointment to a judgeship.

L. Action after identifying a possible conflict of interest: There is no one-size-fits-all solution here, either. However, there are a couple "must do's" and several "maybe should do's" when a possible conflict is uncovered. They include:

a. Seek advice from supervisors and others: A "must do." The first source of advice should be the office supervisor. An office staff meeting is a good vehicle for hashing out these issues. In addition, the Training Coordinator of the Office of the State Public Defender is available to help answer questions of professional ethics.

b. Full disclosure to the client: Another "must do," even if the attorney does not think there is an actual conflict. If the situation doesn't present a real conflict, the attorney should explain that to the client and obtain his or her acknowledgment that continued representation is appropriate. If the client doesn't agree and wants the attorney removed, or isn't mentally competent, the attorney can then make a decision on how to proceed. But, attorney must never withhold information from the client about any potential conflict. The attorney should document the disclosure and the client's response. The attorney should inform the client of his or her right to file a grievance of the issue and the right to raise the issue to the court.

c. Request for waiver from the defendant or other current client: If there is an actual conflict of interest, the client may want to waive the conflict and retain the attorney after full disclosure of the conflict and what it means to continued representation by counsel. The attorney should document the disclosure and any waiver on the forms provided by the Office of the State Public Defender. The attorney should use sound judgment in deciding whether to ask a current client to waive a conflict. Some conflicts are so serious that the attorney should move to withdraw, even though the client likes the attorney so much that he or she would be willing to waive anything.

d. Request for waiver from a prior client: If, for example, a prior client is a witness or an alleged victim in a current case, the attorney can ask him or her to waive a conflict. This would most likely involve consent for disclosure of privileged information or use of the conviction for which a public defender office represented the prior client as impeachment or character attack. Again, the attorney should use sound judgment in deciding whether to ask for such a waiver, as some conflicts are so serious that waiver will not remove the appearance of impropriety. *See also Montana Rules of Professional Conduct.* Rules 1.9 (Duties to Former Clients), 4.3 (Dealing with Unrepresented Person). Again, the attorney should document the disclosure and any waiver.

e. Building an "ethical wall": In rare cases, an "ethical wall" may cure a conflict of interest. This type of procedure will always be used when an attorney from another Region or the Major Crimes Unit comes into a new Region to handle a conflict matter. An "ethical wall" will screen the attorney from information except that necessary for his case. The "ethical wall" shall screen the attorney from both hard copies of other files, as well as any electronic information concerning the other clients, whether in the case management software, email, or other electronic data.

f. Disclosure to the court and prosecutor: If the attorney is confident that the situation doesn't present an actual conflict, the client agrees, and the attorney documented the client disclosure and acknowledgment, then the attorney may not need to disclose the situation to the court and prosecutor. The attorney may not want to inform others if doing so might tip trial strategy, compromise privileged information, reveal attorney work product, or cause undue invasion of someone's privacy. However, if the attorney's instincts indicate that it is too big of an issue to keep under wraps, or might come back to haunt him or her, then it's time to bring in the judge and opposing counsel. Certainly, any actual conflict of interest should be brought to all parties' attention, even if the client is willing to waive it.

g. Making a record: If the matter is disclosed to the court and prosecutor, the attorney must make sure there is a record of it with all parties present. The client's on-the-record waiver or agreement that there is no actual conflict of interest, after full disclosure that is also on the record, will close the door on almost any controversy. If the attorney's position is that there is no conflict, the attorney will be required to elaborate; a simple denial of a conflict is insufficient.

h. Moving to withdraw: If there is an actual conflict and there is no waiver, the office must withdraw. If multiple current clients are in conflict, the attorney may be able to keep one of the cases if he or she identified the conflict early enough. If so, the attorney should try to keep the most serious or difficult case. If that is not feasible, then the attorney should try to keep the first client in the door. Often, however, the conflicts among current clients aren't discovered until the office is well into its representation of all. If so, the office usually must withdraw from all cases. If the attorney must move to withdraw, keep in mind that, as a general rule, the attorney doesn't have to reveal the factual basis for the conflict. The attorney should resist requests to reveal anything more than is necessary to articulate the conflict and must protect privileged information.

i. Resolve close cases in favor of the most conservative action: If an attorney's instincts indicate something is a potential conflict, then it probably is. If an attorney is uncertain whether a situation presents an actual conflict, then it likely does. If an attorney is ambivalent about telling the court about a possible conflict that he or she thinks was resolved, then the attorney probably should.

M. Joint Defense Agreements: In the event of a multiple defendant case involving a public defender office, or a contract attorney, and any outside counsel, the following guidelines should apply to any joint defense agreements entered into. A joint defense agreement should be in writing, signed by all counsel and clients after consultation, and should provide the following:

a. The agreement must not create any kind of an attorney-client relationship between co-defendants;
b. Information that is shared under the agreement is privileged;
c. Anyone who withdraws from the agreement remains bound by confidentiality as to any information obtained through the joint defense agreement;
d. All parties agree that in the event one withdraws to cooperate with the government, any potential conflict of interest is waived by all parties. Anyone who withdraws from the agreement shall provide notice to all other parties prior to withdrawing, and return all documents provided pursuant to the agreement prior to withdrawing. A log should be kept of all meetings attended under the joint defense agreement, as well as any information and documents shared pursuant to the agreement;
e. In the event that any defendant in the agreement testifies at trial, he or she agrees to waive the confidentiality provisions of the joint defense agreement to allow any other remaining party to the agreement to cross-examine him or her on the basis of information he or she has shared through the joint defense agreement;
f. The agreement must recite a procedure for withdrawing from the agreement;
g. All documents provided pursuant to the joint defense agreement must be returned upon the termination of the agreement.

5. Conflict Cases:

A. When a case is determined to be a conflict of interest, the Regional Deputy Public Defender shall assign the case to a private attorney whose name is maintained on the conflict attorney list.

B. Once the Regional Deputy Public Defender assigns a conflict case, the Regional Deputy Public Defender and all staff including investigators within that office shall have no involvement in the case whatsoever.

C. The conflict attorney shall submit bills for the payment of attorney time to the Contracts Manager. In reviewing bills, the Contract Manager shall:

a. Review the total hours of work claimed;
b. Review the work expended without reference to the charge or the parties involved;
c. Review any costs claimed, referencing any pre-approval requirements.

D. Costs, other than attorney fees, expected to be incurred by a conflict attorney which exceed $200, will be pre-approved by the Training Coordinator.

a. In determining pre-approval, the Training Coordinator will not disclose any information about the case to the Contracts Manager or the Chief Public Defender.
b. The review of pre-approval costs shall, in most cases, only question if other options are available that are more cost-effective and just as good.

E. The Chief Public Defender, Contracts Manager, and Training Coordinator will confer with each other about the availability of experts or other options relating to costs in cases without reference to the specifics of any case.

IV. ADMINISTRATION OF DEFENDER SERVICES

1. Attorney-Client Communication:

Goal: Regular and confidential communication between attorneys and clients is a necessary part of effective representation.

A. Effective representation of an accused client requires prompt and effective communication with the client. This communication includes personal and telephone contacts with a client in custody.

B. To ensure the privacy essential for confidential communication between counsel, public defender staff, and client, adequate facilities should be available for private discussions in jails, prisons, courthouses, healthcare facilities, and other places where accused clients must confer with counsel.

C. Personnel of jails, prisons, custodial institutions, and healthcare facilities should be prohibited from examining or otherwise interfering with any communication or correspondence between client, defense counsel, or public defender staff relating to legal action arising out of charges or incarceration.

D. Each jail or detention facility should make available an unmonitored and unrecorded toll-free telephone for purposes of allowing indigent clients to contact and confer with counsel and public defender staff on at least a daily basis. Counsel should be allowed personal contact with an incarcerated client at any time upon counsel's request.

E. A public defender office policy, contract for indigent defense services, and individual assignments of counsel shall include a requirement that a client in custody must speak with counsel either in person or by telephone at least weekly, unless otherwise agreed between the client and counsel.

F. The Regional Public Defender Offices shall take appropriate action to ensure these standards are implemented.

2. Delivery of Services:

Goal: Counsel shall strive for excellence in the representation of the indigent client.

A. Counsel representing indigent clients should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of counsel for specific cases should not be made by the judiciary, but should be arranged for by the administrators of the public defender office, assigned counsel, and contract-for-service programs.

B. The Chief Public Defender and his or her staff should be compensated at a rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices.

C. The Office of the State Public Defender shall award contracts for indigent legal services only after determining that counsel or the firm chosen can meet the standards set forth herein. Under no circumstances should a contract be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned. Counsel or firms bidding for contracts must demonstrate their ability to meet these standards. While the Office of the State Public Defender may, in the sole discretion of the Chief Public Defender, choose to consult with judges, the Attorney General's Office, city attorneys, county prosecutors, and law enforcement officers in deciding who to select as attorneys to provide services as assigned counsel, those parties may neither select nor prohibit the selection of any counsel or law firm.

D. Contracts for public legal representation services should be awarded for at least one-year terms. Removal of the contracting counsel or firm before the agreed term should be for good cause only. The contract shall define "good cause" as "a failure by contracting counsel to comply with the terms of the contract that impairs the delivery of services to clients, or a willful disregard by contracting counsel of the rights and best interest of clients."

E. Contracts for services must be awarded on a competitive process and must involve the following considerations:

a. The categories of cases in which contracting counsel is to provide services;
b. The term of the contract and the responsibility of contracting counsel for completion of cases undertaken within the contract term;
c. Identification of counsel who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;

d. Allowable representation workloads for individual counsel, including the amount of private practice engaged in outside the contract, and measures to address excessive workloads, consistent with these Standards;
e. Minimum levels of experience and specific qualification standards for contracting counsel, including special provisions for complex matters, compliance with standards established by the Montana Supreme Court in capital cases, and compliance with the standards of the Montana Public Defender Commission for capital cases;
f. A policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses;
g. Reasonable compensation levels consistent with these standards and a designated method of payment;
h. Sufficient support services and provision for reasonable expenses, subject to prior approval as outlined by the Office of the State Public Defender in its policy manual, for paralegal and investigative services, expert witnesses, and other litigation costs to be paid on an "as needed" basis in addition to the contract compensation;
i. A process for the professional development of assigned counsel, including supervision, evaluation, and training in accordance with standards set by the Montana Public Defender Commission;
j. Protection of client confidences, attorney-client information, and work product related to contract cases, except under a legal court order to divulge, or after receiving a voluntary, knowing, and intelligent waiver from the client in the case, or to a subsequent attorney in the case;
k. A system of case management and reporting as required by the Office of the State Public Defender;
l. The grounds for termination of the contract by the parties;
m. A requirement that contracting counsel provide for retention of client files in a manner that affords protection of the client's confidentiality interest for three years from the date of conclusion of the matter in the trial court, or until the client is no longer subject to State supervision, whichever is longer.

F. Determination of indigence after initial representation by retained counsel.
a. It is of primary importance to the members of the bar and to the public that a lawyer who undertakes representation of a client in criminal proceedings continues to represent the client at least through the trial stage of the proceedings, unless the continued representation would result in the violation of a disciplinary rule. Continuity of counsel in proceedings should be mandated in order to protect the rights of the client by avoiding, wherever possible, the adverse effect and possible prejudice to the client caused by an attorney's withdrawal.
b. The Office of the State Public Defender shall assign counsel to a client initially represented by retained counsel only after a written motion has been made by retained counsel.

c. If retained counsel has filed a written motion for a determination of indigence and to withdraw from the case no later than sixty days after counsel has either filed a notice of appearance or actually made a court appearance on behalf of the client, and not less than thirty days prior to trial or any evidentiary hearing, OPD, subject to a determination of indigence, shall assign new counsel to the client.
d. When retained counsel makes a written motion for a determination of the client's indigence at a time other than that set forth in paragraph (c), above, and the client meets the financial eligibility requirements for indigent services, OPD shall assign the moving counsel to provide legal services for the client.
e. If, upon motion by the Regional Public Defender's Office, a court determines that the foregoing practice has led to abuse by an attorney who has in the past repeatedly requested a determination of his client's indigence after undertaking representation as retained counsel, the court may order continued representation by that attorney without assignment by the public defender's office or cost to the public.

G. The Chief Public Defender and Regional Public Defenders shall provide for contract oversight and enforcement to assure compliance with these Standards and applicable Montana statutes. For conflict of interest cases, the Conflicts Coordinator shall provide such oversight.

3. Accounting and Billing System:

Goal: A transparent standardized accounting and billing system that maintains client confidentiality is the best way to achieve financial accountability.

4. Performance Evaluations

A. Each attorney employed as a public defender shall have their work performance evaluated on a yearly basis.

B. The evaluation will be conducted by a combination of the Chief Public Defender, and the Training Coordinator, and/or the Regional Deputy Public Defender in the region in which the public defender is employed and/or the Managing Attorney in the office in which the public defender is employed.

C. The performance evaluation shall be done on forms approved by the Office of the State Public Defender.

D. In conducting the evaluation, the evaluators may obtain information from a variety sources including clients, other public defenders, office staff, judicial personnel and faculty from trainings the public defender has attended.

E. The public defender shall be interviewed during the evaluation process.

F. At the conclusion of the process, the evaluation will be reviewed and discussed with the public defender.

G. If the public defender disagrees with the results of the evaluation the public defender has the right to submit a written rebuttal which shall be attached to the evaluation. A permanent employee may file a grievance as provided by state law.

H. Performance evaluations shall remain in the personnel file for the duration of employment and in conformity with state policy.

5. Proficiency Determination for Contract Attorneys

A. Each private attorney providing contact services to the Montana Office of the State Public Defender shall undergo a proficiency determination annually.

B. The proficiency determination will be conducted by a combination of the following: the Chief Public Defender, and OPD Training Coordinator, and/or Regional Deputy Public Defender from the region in which the contract attorney renders services, and the OPD Contracts Manager.

C. In conducting the determination, the contract attorney will be observed in court and information may be obtained from clients, the Regional Deputy Public Defender in any region in which the contract attorney renders public defender services, judicial personnel and faculty from training the contract attorney attends during the preceding contract year.

D. The contract attorney will meet with OPD during the determination process.

E. The contract attorney will submit an "experience survey" and update it annually.

F. Upon the completion of the determination process, OPD shall certify the contract attorney's proficiency within all applicable areas of public defense law.

G. A proficiency certification will be signed by the contract attorney , the Chief Public Defender, and the Contracts Manager.

H. If the contract attorney is determined to not be proficient in an area of public defense law, OPD will recommend remedial steps to obtain proficiency. The contract attorney may file an objection with the OPD and meet with the Chief Public Defender.

V. CASELOADS

Goal: Caseloads must not be oppressive, and should match counsel's experience, training, and expertise.

1. Governing Principle:

Counsel caseloads should be governed by the following:

A. Individual Public Defender. Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their work loads are unmanageable. Whenever a salaried or contracting counsel determines, in the exercise of counsel's best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases, will lead to furnishing representation lacking in quality or the breach of professional obligations, the attorney is required to inform the Regional Public Defender's Office, who shall inform the Chief Public Defender. The Chief Defender will then inform the Montana Public Defender Commission.

B. Chief Public Defender. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Whenever the Chief Public Defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will, by reason of their excessive size and complexity, interfere with the rendering of quality representation, or the breach of professional obligations, the Chief Public Defender is required to inform the Montana Public Defender Commission, which in turn will inform the Law and Justice Interim Committee, the Legislative Finance Committee, and the Office of Budget and Program Planning and shall take all reasonable steps to alleviate the situation.

2. Caseload Evaluation:

A. In attempting to establish caseload standards for public defender offices, the Commission encountered a number of difficulties. In considering maximum caseload standards, it is inherently difficult to compare the work required for different types of cases. Each case is so individually different, that it is nearly impossible to set rigid numerical objectives. Also, physical and geographical factors can influence an office's caseload capacity as well. An office which from a single location in a geographically large jurisdictional area is required to serve numerous distant scattered courts has a lower caseload capacity per attorney than an office in a geographically small jurisdiction or one in which all of the courts, the jail, and the public defender's office are housed in a single building.

B. The caseload of counsel should allow him or her to give each client the time and effort necessary to ensure effective representation. Regional public defender offices, contract counsel, and assigned counsel should not accept workloads that, by

reason of their excessive size, interfere with the rendering of quality representation. Caseload limits should be determined by the number and type of cases being accepted, and on the local prosecutors charging and plea-bargaining practices. It is the Commission's intention in considering caseloads, that the caseload of each counsel shall be considered by the criteria of reasonableness. One measure of the reasonableness of an attorney's caseload is to assess the amount of time an attorney would spend on a case under these standards. An accepted national standard for public defender attorneys is to work approximately 2,000 hours per year. One serious case requiring 50-100 hours to bring to trial, limits the time an attorney can devote to his or her remaining cases. In setting these maximum caseload levels, it is the Commission's intent that the maximum caseload levels of each attorney be judged by considering the complexity of the case, trial preparation, and travel. In other words, if a public defender works diligently and efficiently as required by the employment agreements, then the number of cases he or she is able to handle would be considered reasonable. Conversely, to require a public defender attorney to work diligently and efficiently more than the time required by the employment agreements would be considered an unreasonable caseload.

C. A "case" consists of all charges against a single defendant arising out of a single event, transaction, or occurrence, or all charges arising out of a series of related incidents charged in a single information or complaint (including collateral matters such as probation violations which do not require a separate dispositional hearing) and should be counted and reported as one case. If a separate probation revocation hearing is required, the probation hearing shall be counted as a separate misdemeanor case. If two or more defendants are charged in a single information or complaint, the charges against each defendant should be counted and reported as separate cases.

D. The Montana Public Defender Commission intends to review numerical caseload standards from time to time. These suggested caseload numbers shall be posted on the Public Defender Web site and may be modified from time to time.

E. The standard applicable to each category of cases is intended to be a suggestion only and is not intended to be a maximum limitation on the average current caseloads of each attorney employed as a public defender. Based on the standard of reasonableness, the numerical limits found on the Website may have to be adjusted in rural areas where attorneys may travel great distances between courts or upon the complexity of each case.

VI. QUALIFICATIONS AND DUTIES OF COUNSEL

Goal: Counsel must meet these minimum standards before accepting a case. In order to provide effective representation, counsel must engage in regular and ongoing training.

A. In order to assure that clients receive the effective assistance of counsel to which they are constitutionally and statutorily entitled, counsel providing public legal representation should meet the following minimum professional qualifications:

a. Satisfy the minimum requirements for practicing law in Montana as determined by the Montana Supreme Court;
b. Complete twenty hours of continuing legal education within each calendar year from courses, offered or approved by the Office of the State Public Defender, relating to public defender practice or representing persons whose liberty is at risk as a result of State-initiated proceedings;
c. Comply with all other training requirements established by the Training Coordinator of the Office of the State Public Defender and approved by the Public Defender Commission; including, but not limited to, mental health disabilities, cultural competency, and drug dependency.
d. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the State of Montana. Counsel has a continuing obligation to stay abreast of changes and developments in the law;
e. The foregoing requirements shall be deemed satisfied if counsel is representing clients pursuant to the Student Practice Rule and is being directly supervised by a supervising attorney who meets the standards required for felony defense set forth below.

B. Additional trial attorneys' qualifications according to type of case:

a. Death penalty representation. Each attorney acting as lead counsel in a death penalty case shall meet the standards for competency of counsel for indigent persons in death penalty cases adopted by the Montana Supreme Court, and those set forth in the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003);
b. Juvenile cases. See Standard Number 4;
c. Involuntary commitments. See Standard Number 5, 6, 7, and 11;
d. Abuse and neglect cases. See Standard Number 8;
e. Felony representation. See Standard Number 1;
f. All other cases. Each attorney shall meet the requirements set forth herein and in the Montana Rules of Professional Conduct.

C. Counsel should only request or accept an assignment if counsel is able to provide quality representation and diligent advocacy for the client.

D. Trial Standards for Non-capital Cases.

1. General Duties of Defense Counsel:

A. Before agreeing to act as counsel, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge, and experience to offer effective representation to a defendant in a particular matter. If it later appears that

counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

C. Counsel has the obligation to keep the client informed of the progress of the case.

D. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Rules of Professional Conduct and in accordance with the Disciplinary Rules of the State Bar of Montana.

2. Obligations of Counsel Regarding Pretrial Release:

A. Counsel has an obligation to meet with incarcerated defendants as stated previously in these Standards, and shall take other prompt action necessary to provide quality representation, including:

a. Invoking the protections of appropriate constitutional provisions, federal and State laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the State and court.
b. Attempting to secure the pretrial release of the client.

3. Counsel's Interview with Client:

A. Preparing for the Interview. After being assigned to a case and prior to conducting the initial interview, the attorney should, where possible, do the following:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and,
b. obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available. In addition, where the client is incarcerated, the attorney should:
    i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
    ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and,
    iii. be familiar with any procedures available for reviewing the bail determination.

B. Conducting the Interview. The attorney should, where possible, do the following:

a. The purpose of the initial interview is to acquire information from the client concerning the case, the client, and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, disability, or different cultural backgrounds, can be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, and prison records, or other records as may be pertinent.

b. Counsel shall complete the interview form provided by the Office of the State Public Defender for use at the initial interview. Information that should be acquired from the client includes, but is not limited to, the following:

i. The client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client was interrogated and, if so, whether a statement given; client's physical and mental status at the time any statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or bodily fluids;

ii. The names and custodial status of all co-defendants and the name of counsel for co-defendants, if counsel has been appointed or retained;

iii. The names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the State, which counsel should take steps to insure is preserved;

iv. The client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or aliases used, family relationships, immigration status if applicable, employment record and history, and social security number;

v. The client's physical and mental health, educational, vocational and armed services history;

vi. The client's immediate medical needs including the need for medication, detoxification programs and/or substance abuse treatment;

vii. The client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation or parole and the client's past or present performance under supervision;

viii. The names of individuals or other sources that counsel can contact to verify the information provided by the client; counsel should obtain the permission of the client before contacting these individuals;
ix. For clients who are incarcerated, the ability of the client to meet any financial conditions of release;
x. Where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records of treatment or testing for mental health or developmental disability; and
xi. The client's citizenship status.

C. Information to be provided to the client includes, but is not limited to, the following:

a. a general overview of the procedural progression of the case, where possible;
b. an explanation of the charges and the potential penalties;
c. an explanation of the attorney-client privilege and instructions not to talk to anyone, including prisoners, about the facts of the case without first consulting with the attorney;
d. the names of any other persons who may be contacting the client on behalf of counsel;
e. any potential impact of Federal prosecution;
f. an explanation of the procedures that will be followed in setting the conditions of pretrial release;
g. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense;
h. a warning of the dangers with regard to the search of a client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

D. Counsel must be alert to potential issues concerning the client's incompetency, mental illness or developmental disability. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or developmental disability, and should become familiar with the procedures related to the evaluation and to subsequent proceedings. Also:

a. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals information that presents genuine issues of competency;
b. Where appropriate, counsel should advise the client of the potential consequences of raising questions of competency, as well as the defense of mental disease and defect, both as it relates to guilt and to sentencing. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client. Counsel should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. Counsel has an issue to raise legitimate issues of competency even over the objection of the client.

E. If special conditions of release have been imposed, such as random drug screening, or other orders restricting the client's conduct have been entered, such as a no contact order, the client should be advised of the legal consequences of failure to comply with such conditions. In the event the court orders routine contact with the attorney is a condition of release, the attorney shall not waive attorney-client privilege as to contact with the client.

F. If counsel is meeting with the client before his assignment to the case pursuant to these Standards, counsel should only obtain information necessary to advise the client concerning the initial hearing and advise the client not to discuss confidential information concerning the merits of the case.

4. Counsel's Duty in Pretrial Release Proceedings:

A. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, make a proposal concerning conditions of release.

B. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

C. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets.

D. The decision as to whether or not the client should testify at any bond hearing shall be made after consultation between counsel and the client. In the event that the client and counsel decided that it would be in the best interests of the client to testify regarding bond, counsel should instruct his or her client not to answer any questions that do not pertain strictly to the issue of bond.

5. Counsel's Duties at Preliminary Hearing:

A. If the client is entitled to a preliminary hearing, counsel should take steps to see that the hearing is conducted in a timely fashion, unless there are strategic reasons for not doing so.

B. In preparing for the preliminary hearing, counsel should become familiar with:
   a. the elements of each of the offenses alleged;
   b. the law of the jurisdiction for establishing probable cause;
   c. factual information which is available concerning probable cause;
   d. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings; and,
   e. the potential impact on the admissibility of any witness' testimony if they are later unavailable at trial.

6. Duty of Counsel to Conduct Investigation:

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, ensure that the charges and disposition are factually and legally correct and that the client is aware of potential defenses to the charges.

B. Sources of investigative information and relevant procedures may include the following:

a. Arrest warrant, accusation, complaint and/or information, along with any supporting documents used to establish probable cause, should be obtained and examined to determine the specific charges that have been brought against the accused;
b. The relevant criminal statues and case law precedents should be examined to identify:
    i. the elements of the offense(s) with which the accused is charged;
    ii. the defenses, ordinary and affirmative, that may be available;
    iii. any lesser included offenses that may be available; and,
    iv. any defects in the charging documents, constitutional or otherwise, such as statue of limitations or double jeopardy.
c. Interviewing witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview.
d. The police and prosecution reports and documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain CJIN (NCIC or criminal history records from other states) records for the client and for the prosecution witnesses.
e. Physical evidence. Where appropriate, counsel should make a prompt request for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.
f. The scene of the incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident, including the same weather, time of day, and lighting conditions.
g. Securing the assistance of experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:
    i. the preparation of the defense;
    ii. adequate understanding of the prosecution's case; or
    iii. rebut the prosecution's case.

7. Formal and Informal Discovery:

A. Counsel should consider seeking discovery, at a minimum, of the following items by written motion:

a. Potential exculpatory information;
b. Potential mitigating information;
c. The names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
d. All oral and/or written statements by the client, and the details of the circumstances under which the statements were made;
e. The prior criminal record of the client and any evidence of other misconduct that the government may intend to use against the client;
f. All books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
g. All results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
h. Statements of co-defendants;
i. All investigative reports by all law enforcement and other agencies involved in the case;
j. All records of evidence collection and retained by law enforcement; and,
k. Counsel shall file with the court a receipt of all materials received.

8. Development of a Theory of the Case:

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case and develop strategies for advancing the appropriate defenses on behalf of the client.

9. The Duty to File Pretrial Motions:

A. Counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Counsel should withdraw or decide not to file a motion only after careful consideration and determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default.

D. Counsel should consider the advisability of disqualifying or substituting the presiding judge. This consideration should include any information about the judge's history in aligning himself with the prosecution on bail issues, motion rulings, trial

rulings, any routine refusals of plea bargains, the client's experience with the judge, and any specific dislike of counsel, other public defenders, or public defenders in general.

a. Prior to filing a motion to disqualify or substitute the judge, counsel shall consult with the managing attorney in his office and/or his or her Regional Deputy Dublic Defender.
b. The decision to disqualify a judge shall only be made when it is a reasoned, strategic decision and in the best interest of the client. The final decision rests with counsel.

10. Preparing, Filing, and Arguing Pretrial Motions:

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules, and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. investigation, discovery, and research relevant to the claim advanced;
b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
c. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and
d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

C. In every case, counsel should examine whether it is appropriate to file a motion to suppress evidence or statements.

D. In every case that proceeds to trial, counsel should file timely and appropriate motions in limine to exclude any improper evidence or prosecutorial practices.

11. Continuing Duty to File Pretrial Motions:

A. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

12. Duty of Counsel in Plea Negotiation Process:

A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and, in

doing so, should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

B. Counsel should keep the client fully informed of any continued plea discussion and negotiations and promptly convey to the accused any offers made by the prosecution for a negotiated settlement.

C. Counsel shall not accept any plea agreement without the client's express authorization.

D. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

13. The Process of Plea Negotiations:

A. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of the following:

a. the maximum term of imprisonment, fine or restitution that may be ordered, and any mandatory sentence, as well as the possible adverse impact on those with a guilty plea;
b. the possibility of forfeiture of assets;
c. other consequences of conviction including, but not limited to, deportation, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, and potential federal prosecutions;
d. any possible and likely sentence enhancements or parole consequences, and the actual possibility of programs from the Department of Corrections;

B. In developing a negotiation strategy, counsel should be completely familiar with:

a. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to, the following:
    i. not to proceed to trial on merits of the charges;
    ii. to decline from asserting or litigating any particular pretrial motions;
    iii. an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and
    iv. providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity.
b. benefits the client might obtain from a negotiated settlement, including, but not limited to, an agreement that provides:

i. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;
ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;
iii. that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;
iv. that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence, or one within a specified range;
v. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;
vi. that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, certain information; and,
vii. that the defendant will receive, or the prosecution will recommend, specific benefits concerning the client's place and/or manner of confinement and/or release on parole, and the information concerning the client's offense and alleged behavior that may be considered in determining the client's date of release from incarceration, taking into consideration availability of probation from Department of Corrections.

c. the position of any alleged victim with respect to conviction and sentencing. In this regard, counsel should:
i. consider whether interviewing the alleged victim or victims is appropriate and, if so, who the best person to do so is and under what circumstances;
ii. consider to what extent the alleged victim or victims might be involved in the plea negotiations;
iii. be familiar with any rights afforded the alleged victim or victims under Montana law; and,
iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

C. In conducting plea negotiations, counsel should be familiar with:
a. the various types of pleas that may be agreed to, including a plea of guilty, a plea of *nolo contendere*, and a plea in which the defendant is not required to personally acknowledge his or her guilt - see North Carolina v. Alford plea;
b. the advantages and disadvantages of each available plea according to the circumstances of the case;
c. whether the plea agreement is binding on the court, prison, and parole authorities; and,
d. possibilities of pre-trial diversion.

D. In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department which may affect the content and likely results of negotiated plea bargains.

14. The Decision to Enter a Plea of Guilty:

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution and explain to the client the full content of the agreement, as well as the advantages and disadvantages of the potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client; counsel should not tempt to unduly influence that decision.

C. If the client is a juvenile being prosecuted as an adult, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

D. A negotiated plea should be committed in writing.

15. Entering the Negotiated Plea before the Court:

A. Prior to the entry of the plea, counsel should:
   a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;
   b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions, and collateral consequences the client will be exposed to by entering a plea;
   c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and,
   d. make certain that if the plea is non-binding, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.

B. Counsel must become familiar with the consequences of a plea or finding of guilty in state court upon any current or future federal prosecution. These consequences include, without limitation, the following:
   a. Federal Lacey Act prosecutions for fish and game violations;
   b. Federal firearms charges, including those resulting in mandatory minimum sentences when firearms are associated with the possession or distribution of dangerous drugs;

c. The possibility of a separate federal prosecution based upon the same transaction, without the defense of double jeopardy, in charges alleging dangerous drug distribution, possession and sale of drug paraphernalia, bank robbery, fraud, environmental crimes, arson, intimidation, kidnapping, murder, civil rights violations, bribery, and child pornography;
d. The impact of a conviction on the United States Sentencing Guidelines when determining the client's criminal history category;
e. Racketeering Influenced and Corrupt Organization (RICO) prosecutions for engaging in a pattern of conduct which includes state crimes stemming from violence or gambling;
f. Money laundering prosecutions for engaging in financial transactions associated with or involving income derived from certain criminal conduct;
g. Hobbs Act prosecutions for state crimes of intimidation, arson, and violent crimes impeding or affecting interstate commerce;
h. Firearm restrictions on those convicted of felonies and certain misdemeanor convictions;
i. Immigration consequences of convictions of re-entry into the United States after certain felony convictions.
j. Impact of the Adam Walsh Act

C. When entering the plea, counsel should make sure that a written plea agreement containing the full content and conditions of the plea agreement are placed on the record before the court.

D. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

16. Counsel's Duty of Trial Preparation:

A. The decision to proceed to trial with or without a jury rests solely with the client after consultation with counsel. Counsel should discuss the relevant strategic considerations of this decision with the client and maintain a record of the advice provided to the client, as well as the client's decision concerning trial.

B. Where appropriate, counsel should have the following materials available at the time of trial:

a. copies of all relevant documents filed in the case;
b. relevant documents prepared by investigators;
c. *voir dire* questions;
d. outline or draft of opening statement;

e. cross-examination plans for all possible prosecution witnesses;
f. direct examination plans for all prospective defense witnesses;
g. copies of defense subpoenas;
h. prior statements of all prosecution witnesses, such as transcripts or police reports; counsel should have prepared transcripts of any audio or video taped witness statements;
i. prior statements of all defense witnesses;
j. reports from defense experts;
k. a list of all defense exhibits and the witnesses through whom they will be introduced;
l. originals and copies of all documentary exhibits;
m. proposed jury instructions with supporting case citations;
n. a list of the evidence necessary to support the defense requests for jury instructions;
o. copies of all relevant statutes and cases; and,
p. outline or draft of closing argument.

C. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process; counsel should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial, such as the use of prior convictions to impeach the defendant, and, where appropriate, prepare motions and memoranda for such advance rulings.

E. Throughout the trial process, counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review and should ensure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review, unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should ensure that the client has appropriate clothing and that the court personnel follow appropriate procedures so as not to reveal to jurors that the defendant is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint.

G. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

I. Counsel shall take necessary steps to ensure full official recordation of all aspects of the court proceeding.

17. Jury Selection:

A. Preparing for Voir Dire:

a. Counsel should be familiar with the procedures by which a jury venue is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

c. Prior to jury selection, counsel should obtain a prospective juror list, and the standard jury questionnaires. Counsel should also consider requesting use of a separate questionnaire that is tailored to the client's case.

d. Counsel should develop *voir dire* questions in advance of trial and tailor *voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case. Among the purposes *voir dire* questions should be designed to serve are the following:

i. to elicit information about the attitudes of individual jurors, which will inform counsel and client about peremptory strikes and challenges for cause;

ii. to convey to the panel certain legal principles which are critical to the client's case;

iii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iv. to present the client and his or her case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and,

v. to establish a relationship with the jury.

e. Counsel should be familiar with the law concerning mandatory and discretionary *voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

f. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

g. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

B. Examination of the Prospective Jurors:

a. Counsel should personally *voir dire* the panel.

b. Counsel should take all steps necessary to protect the *voir dire* record for appeal, including, where appropriate, filing a copy of the proposed *voir dire* questions or reading proposed questions into the record.

c. If the *voir dire* questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of

the other jurors and that the court, rather than counsel, conduct the *voir dire* as to those sensitive questions.

d. In a group *voir dire*, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.

C. Challenging the Jurors for Cause:

Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

18. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

B. Counsel should be familiar with the laws of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case. It should only be in exceptional circumstances that the opening statement is not made at the first opportunity.

D. Counsel's objective in making an opening statement may include the following:

a. to provide an overview of the defense case;
b. to identify the weaknesses of the prosecution's case;
c. to emphasize the prosecution's burden of proof;
d. to summarize the testimony of witnesses and the role of each in relationship to the entire case;
e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;
f. to clarify the jurors' responsibilities;
g. to state the ultimate inferences which counsel wishes the jury to draw; and,
h. to establish counsel's credibility with the jury.

E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise.

19. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable laws and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense, and closing argument;
b. consider whether cross-examination of each individual witness is likely to generate helpful information;
c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
d. consider a cross-examination plan for each of the anticipated witnesses;
e. be alert to inconsistencies in a witness' testimony;
f. be alert to possible variations in witness' testimony;
g. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
h. have prepared a transcript of all audio or video tape recorded statements made by the witness;
i. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records, and department regulations for possible use in cross-examining police witnesses;
j. be alert to issues relating to witness credibility, including bias and motive for testifying; and,
k. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a *voir dire* examination of potential prosecution witness who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should consider making appropriate motions or sanctions and, at a minimum, request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion so that counsel may make an informed decision about whether to present a defense case.

20. Presenting the Defendant's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Counsel should also consider the tactical advantage of having final closing argument when making the decision whether to present evidence other than the client's testimony.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.

C. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

D. In preparing for presentation of a defense case, counsel should, where appropriate, do the following:

a. develop a plan for direct examination of each potential defense witness;
b. determine the implications that the order of witnesses may have on the defense case;
c. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
d. consider the possible use of character witnesses;
e. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
f. review all documentary evidence that must be presented; and,
g. review all tangible evidence that must be presented.

E. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

F. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

G. Counsel should conduct redirect examination as appropriate.

H. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

21. Preparation of the Closing Argument

A. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

B. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, as well as provisions for rebuttal argument by the prosecution.

C. In developing closing argument, counsel's argument should reflect his or her theory of the case. Counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case;
b. describing favorable inferences to be drawn from the evidence;
c. incorporating into the argument:
    i. helpful testimony from direct and cross-examinations;
    ii. verbatim instructions drawn from the jury charge; and,
    iii. responses to anticipated prosecution arguments;
d. and the effects of the defense argument on the prosecutor's rebuttal argument.

D. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to, the following:

a. whether counsel believes that the case will result in a favorable verdict for the client;
b. the need to preserve the objection for appellate review; or,
c. the possibility that an objection might enhance the significance of the information in the jury's mind.

22. Jury Instructions

A. Counsel should be familiar with the appropriate rules of court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges, and preserving objections to the instructions.

B. Counsel should always submit proposed jury instructions in writing.

C. Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Counsel should provide citations to appropriate law in support of the proposed instructions.

D. Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

E. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of proposed instructions is included in the record along with counsel's objection.

F. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.

G. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

H. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

23. Obligations of Counsel at Sentencing Hearing

A. Among counsel's obligations in the sentencing process are the following:
   a. where a client chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial, and collateral implications;
   b. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;
   c. to ensure all reasonably available mitigating and favorable information which is likely to benefit the client is presented to the court;

d. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;
e. to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful, or is otherwise improper, is stricken from the text of the pre-sentence investigation report before distribution of the report; and,
f. to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever warranted and possible.

24. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

a. any minimum sentences and any exceptions;
b. deferred sentences, suspended sentences, and diversionary programs;
c. the effect of confidential criminal justice information;
d. probation or suspension of sentence and permissible conditions of probation;
e. the potential of recidivist sentencing;
f. fines, associated fees, court costs;
g. victim restitution;
h. reimbursement of attorneys' fees;
i. imprisonment including any mandatory minimum requirements;
j. the effects of mental disease or defect, or the implication of MCA §46-14-311,312, "Guilty But Developmentally Disabled"; and,
k. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

a. credit for pre-trial detention and credit against fines imposed;
b. parole eligibility and applicable parole release ranges;
c. place of confinement, level of security, and classification criteria used by Department of Corrections;
d. eligibility for correctional and educational programs;
e. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;
f. deportation and other immigration consequences;
g. loss of civil rights;
h. impact of a fine or restitution and any resulting civil liability;
i. possible revocation of probation or possible revocation of parole status if client is subject to a prior sentence;
j. suspension of a motor vehicle operator's permit;
k. prohibition of carrying a firearm;

l. other consequences of conviction including, but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender and/or violent offender, loss of public housing, and the loss of the right to hold public office; and,
m. potential federal consequences.

C. Counsel should be familiar with the sentencing procedures, including:
a. the effect that plea negotiations may have upon the sentencing discretion of the court;
b. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
c. the use of "Victim Impact" evidence at any sentencing hearing;
d. the right of the defendant to speak prior to being sentenced;
e. any discovery rules and reciprocal discovery rules that apply to sentencing hearings;
f. the use of any minimum sentences;
g. any restrictions that may be placed on parole or other early release; and,
h. the possibility of any increases in sentencing due to a persistent felony offender notice and any possible challenges to such notice.

D. Where the Court uses a pre-sentence report, counsel should be familiar with:
a. the practices of the officials who prepare the pre-sentence report and the defendant's rights in that process;
b. the access to the pre-sentence report by counsel and the defendant;
c. the prosecution's practice in preparing a memorandum on punishment; and,
d. the use of a sentencing memorandum by the defense.

E. Counsel shall, where appropriate, attend any interview with the client, review any pre-sentencing homework, and review the pre-sentence investigation report with the client.

25. Preparation for Sentencing

A. In preparing for sentencing, counsel should consider the need to:
a. Inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
b. Maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
c. Obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition,

financial status, and family obligations, as well as sources through which the information provided can be corroborated;

d. Inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the any statement to be made to the court, taking into consideration the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial, or trial on other offenses;
e. Inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;
f. Prepare the client to be interviewed by the official preparing the pre-sentencing report and be present during any such interview. Counsel shall also review any pre-sentence investigation report with the client sufficiently in advance of the sentencing hearing to allow adequate time to rebut any inaccurate information in the PSI report.
g. Inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;
h. Collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and,
i. Inform the client of the operation of the Sentence Review Division and the procedures to be followed in submitting any possible sentence to them for review, if applicable.

26. The Prosecution's Sentencing Position

Counsel should attempt to determine whether the prosecution will advocate that a particular type or length of sentence be imposed, unless there is a sound tactical reason for not doing so.

27. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, counsel should ascertain who has the burden of proving a fact unfavorable to the client, be prepared to object if the burden is placed on the defense, and be prepared to

present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment, or drug rehabilitation.

F. Where appropriate, counsel should prepare the client to personally address the court.

28. A Motion for a New Trial

A. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of guilty has been entered against the client after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

a. The likelihood of success of the motion, given the nature of the error or errors that can be raised; and,
b. The effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

29. The Defendant's Right to an Appeal

A. Following conviction at trial, counsel should inform the client of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal.

B. Where the client takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

30. Defendant's Right to Apply to the Sentence Review Panel

Where applicable, counsel should ensure that the client is informed of the procedure available for requesting a review of his or her sentence by the Sentence

Review Division of the Montana Supreme Court, as well as the advantages and disadvantages of seeking such review.

31. Defendant's Right to Postconviction Relief

Where applicable, counsel should ensure that the client is informed of the procedure available for requesting postconviction relief, as well as the advantages and disadvantages of seeking such review.

32. Representation in Ancillary Proceedings

A. The Public Defender Act authorizes assigned counsel to represent indigent clients only in limited instances. Nevertheless, it may be advantageous to any given client to resolve or initiate ancillary proceedings when reaching the global resolution of a case for which counsel has been assigned. For instance, if a client has been charged with DUI it may be possible to reach a global settlement of that charge which includes the Prosecution conceding the return of the client's driver's license in spite of the fact that the client refused to provide a breath sample at the time of the client's stop or arrest.

B. If counsel is able to reach a global settlement of a case which requires only entry of appearance of counsel in an ancillary proceeding **for the sole purpose** of finalizing a global settlement of matters which include a case for which counsel has been assigned, counsel may do so. If counsel is a contract lawyer counsel shall be reimbursed for counsel's time and expense incurred in making an appearance in an ancillary proceeding solely for the purpose of finalizing a global settlement and for counsel's time in reviewing or drafting a settlement or judgment pursuant to a settlement and appearance in court to affect the settlement. On the other hand, if the ancillary proceeding is, or has the possibility of becoming, adversarial or contested, OPD employees shall not represent a client in an ancillary proceeding and contract counsel shall not be compensated by OPD for representing a client in an ancillary proceeding.

C. Counsel shall inform a client of the client's right or opportunity to initiate an ancillary proceeding when that right or opportunity exists (e.g. Petitioning for Return of Driver's License after refusal to provide breath sample, filing a Federal Habeas Corpus Petition, filing a Claim or Counterclaim for violation of the client's Civil Rights Claim pursuant to 42 U.S.C. 1983, or filing an answer in a forfeiture proceeding) but shall also advise the client that the client must seek counsel outside the Public Defender System to represent the client in such matters.

VII. STANDBY COUNSEL IN CRIMINAL CASES.

Goal: To provide standby assistance to criminal defendants who are proceeding pro se while insuring their individual dignity and autonomy. Standby counsel's participation shall never destroy the jury's perception that the

defendant is representing himself and the defendant shall personally manage and conduct his own defense. Attorneys providing standby assistance shall comply with the general standards for public defenders as well as these specific standards.

1. Defense counsel acting as standby counsel shall:

A. Permit the accused to make the final decisions on all matters, including strategic and tactical matters relating to the conduct of the case.

B. If the defendant requests assistance, bring to the attention of the defendant matters beneficial to him;

C. Not actively participate in the conduct of the defense unless specifically asked to do so by the defendant.

D. Assist the defendant in overcoming routine procedural or evidentiary obstacles that the defendant has clearly shown he wishes to complete.

E. Help to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

2. Standby counsel shall be prepared to assume representation of the Defendant at any stage of the proceedings.

VIII. FACILITIES AND SUPPORT SERVICES:

1. Public defender offices should have a budget for operating expenses that provides for a professional quality office, library, and equipment comparable to the prosecutor's office.

2. Public defender office budgets should include funds for procurement of experts and consultants, ordering of minutes and transcripts on an expedited basis, and for the procurement of other necessary services.

3. In all assigned cases, reasonable compensation for expert witnesses necessary to preparation and presentation of the case shall be provided, subject to prior approval by the Office of the State Public Defender. Expert witness fees should be maintained and allocated from funds separate from those provided for legal services.

4. All public defender offices, and all contract attorneys, shall make arrangements to maintain the confidentiality of client information. This includes physical security for confidential documents, exhibits, and electronic communications. Part of this obligation includes requiring outside contractors that may have access to confidential

information to sign a confidentiality agreement on a form provided by the Office of the State Public Defender. Examples of personnel who might be required to sign such an agreement are IT personnel who have access to counsel's computer system and janitorial personnel who have physical access to counsel's office.

IX. COMPENSATION.

Goal: Parity of resources with the Prosecution is an essential part of effective representation. This includes parity in salaries for full time staff attorneys and a reasonable hourly rate for contract attorneys.

1. Counsel providing public legal representation and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be equal to those of attorneys and staff in prosecutorial offices in the area. Compensation should be computed as follows:

A. Regional Public Defenders shall be compensated at no less than the rate and with the same adjustments, including experience and longevity, as the salary for the County Attorneys of the largest county in which the Regional Public Defender Office is located, including all retirement funding and benefits.

B. The Chief Public Defender shall be compensated at a rate commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

C. In contracts for public legal representation, the contracting firm or counsel shall affirmatively represent in its contract that, in compensating counsel providing services pursuant to the terms of the contract, consideration has been given to the rate commensurate with an equally experienced assistant public defender in that county or the nearest county seat in which a public defender office is located.

2. Contracts not awarded on an hourly basis should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, death penalty cases, and cases resulting in extended trials.

3. When compensating counsel providing services on an hourly basis, the Office of the State Public Defender shall pay at an hourly rate to be established by the Montana Public Defender Commission. The Commission shall review the rate at least annually to determine whether it is a reasonable amount. In the event the rate should be increased, requests shall be made to the appropriate funding authorities for additional funds.

4. Funding shall be sought for Fiscal Year 2008 to increase the contract rate.

X. REPRESENTATION STANDARDS FOR APPELLATE ADVOCACY

Goal: **To actively and effectively represent clients in the appellate process by presenting for appellate review all legal issues that have a reasonable probability of resulting in reversal of the client's conviction or commitment, or improving his or her legal position. Attorneys representing appellants shall comply with the general standards for public defenders as well as these specific Standards.**

1. TRAINING.

A. The attorney will receive a minimum of twenty (20) hours of training specific to the Rules of Appellate Procedure, including acceptable pleadings, deadlines, citations to the record and authority, procedural and substantive legal issues, and applicable rules of professional conduct.

B. Counsel shall reserve regular time to keep current with the statutes, rules, and cases regarding both procedural and substantive legal issues.

C. Counsel shall participate, whether as an instructor or student, in regular training events as directed by the Chief Appellate Defender and shall endeavor to improve professionally to the benefit of his or her clients.

2. HANDLING THE CASE[1]

A. As soon as feasible after conviction or commitment, appellate counsel should confer personally with the appellant to discuss the case. Counsel should explain the meaning and consequences of the court's judgment as well as the right to an appeal and a general outline of the appellate process.

B. Counsel shall, within the time frame set forth in the Rules of Appellate Procedure, request all transcripts and case records.

C. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel.

D. After reviewing the record, counsel should confer with the appellant and discuss whether, in his or her professional judgment, there are meritorious grounds for appeal and the probable results of an appeal. Counsel should explain the advantages and disadvantages of an appeal. The decision whether to proceed with the appeal must be the client's own.

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[1] These standards assume that trial counsel has filed all appropriate post-trial motions as well as a Timely Notice of Appeal

E. Counsel shall be diligent in expediting the timely submission of the appeal and shall comply with all applicable rules regarding conduct, pleadings, deadlines, and citations to authority.

F. Counsel shall not abandon an appeal solely on the basis of his or her own determination that the appeal lacks merit, but rather should advance any sound basis for changing the law. If, after conscientious analysis, counsel determines that there are no non-meritorious grounds for appeal, counsel should follow the procedures outlined in Anders v. California, 386 U.S. 738 (1967) and §46-8-103 MCA. Counsel shall discuss with the client the termination that counsel has made and give due consideration to the wishes of the client.

G. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, and those facts appear on the record, he or she should seek appellate relief for the client on that ground. If counsel is satisfied that a prior attorney did not provide effective assistance and the facts do not appear on the record, counsel should advise the client regarding postconviction rights and, if the appeal is not successful, file the appropriate postconviction petitions.

H. After exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distractive of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.

I. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.

J. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion. If oral argument is granted, counsel should prepare appropriately, including participating in a moot court session.

K. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.

L. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies, including the right to postconviction relief, and the scope of further representation. This information, with particular emphasis on applicable deadlines, should be memorialized in a letter to the client.

M. Counsel shall apply professional judgment when determining whether to file a petition for re-hearing or a petition for *certiorari* to the United States Supreme Court. If counsel believes that the client has a valid claim of ineffective assistance of counsel, counsel should conduct the appropriate investigation and file a timely petition for postconviction relief.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the records, transcripts, files, and other information pertinent to postconviction proceedings.

XI. REPRESENTATION STANDARDS FOR POSTCONVICTION PROCEEDINGS

GOAL: To actively and effectively represent clients in postconviction proceedings by evaluating the case, conducting the appropriate investigation, and presenting all factual and legal issues that have a reasonable probability of resulting in the vacation of the client's conviction or materially improving his or her legal position. Attorneys representing clients in postconviction proceedings shall comply with the general standards for public defenders as well as these specific Standards and with Section 46-21-101 et seq.

1. APPOINTMENT

A. When a court determines an attorney shall be appointed in a postconviction proceeding, the Appellate Defender Office shall assign the case to a contract attorney.

2. TRAINING

A. The attorney will receive a minimum of twenty (20) hours of training specific to the representation of clients in the postconviction process.

B. Counsel shall become familiar with the applicable statutes and case law including civil, pretrial discovery, and motions rules. Counsel shall be familiar with deadline issues, acceptable pleadings, as well as the procedural and substantive legal issues relating to the postconviction process.

C. Counsel shall reserve regular time to keep current with the statutes, rules, and cases regarding both procedural and substantive legal issues.

D. Counsel shall participate, whether as an instructor or student, in regular training events and shall endeavor to grow professionally to the benefit of his or her clients.

3. HANDLING THE CASE

A. As soon as feasible after appointment, counsel should confer personally with the client to discuss the case. Counsel should explain the scope of and procedures applicable to the postconviction process.

B. Counsel shall promptly request all transcripts and case records. Counsel shall request appropriate releases from the client and promptly request complete attorney files. Counsel shall conduct an appropriate investigation and interview relevant witnesses.

C. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel as well as appellate counsel and conduct other appropriate investigation into matters that are not of record.

D. After reviewing the record and conducting the appropriate investigation, counsel should confer with the client and discuss, whether in his or her professional judgment there is the need for filing an amended petition for postconviction relief, including a petition for DNA testing, and probable results of pursuing this avenue. Counsel should explain the advantages and disadvantages of pursuing postconviction relief, as provided by these Standards.

E. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, counsel should pursue relief for the client on that ground.

F. In preparing an amended petition, and after exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distractive of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.

G. Counsel shall be diligent in expediting the timely submission of an amended petition for postconviction relief, keeping in mind the corresponding federal requirements for *habeas corpus* relief, and shall comply with all applicable rules regarding conduct, pleadings, submission of supporting evidence, deadlines, and citations to authority.

H. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.

I. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion and shall prepare appropriately for hearings, including interviewing and subpoenaing witnesses and locating, obtaining, and preparing to present the appropriate evidence.

J. Counsel shall appear with the client at the client's hearing for postconviction relief and/or DNA testing. Counsel shall present the witnesses, exhibits, and arguments that, in his or her professional judgment, are most likely to result in relief for the client.

K. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.

L. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies and the scope of further representation. This

information, with particular emphasis on subsequent deadlines, should be memorialized in a letter to the client. Counsel has a continuing duty to represent the client on appeal.

M. Counsel shall apply professional judgment when determining whether to file an appeal, a petition for *habeas corpus* relief in federal court, or a petition for *certiorari* to the United States Supreme Court. Any decision shall be reviewed by the Chief Appellate Defender.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

XII. REPRESENTATION STANDARDS FOR SENTENCE REVIEW

GOALS:

To actively and effectively represent clients in the sentence review process by evaluating the case and giving the client appropriate advice as to whether to pursue sentence review and, if the client elects to proceed, to present all information and arguments supporting the imposition of a more favorable sentence. Attorneys representing clients in sentence review proceedings shall comply with the general standards for public defenders as well as these specific Standards.

1. TRAINING:

A. The attorney will receive a minimum of twenty (20) hours of training specific to the representation of clients in the sentence review process.

B. Counsel shall become familiar with the rules of the Sentence Review Division as well as the applicable statutes and case law.

C. Counsel shall become familiar with the range of sentences imposed for a particular offense and the factors that have affected the imposition of a particular sentence within that range, as well as with methods of accessing that information.

2. HANDLING THE CASE:

A. If a client receives a qualifying sentence, trial counsel shall advise the client of the right to sentence review and give the client appropriate advice as to whether to pursue sentence review.

B. Counsel shall advise the client that, upon review and within the limits fixed by law, his or her sentence may be raised, lowered, or remain the same. Counsel shall discuss with the client whether in his or her professional judgment there is a reasonable chance of obtaining a more or less severe sentence. Counsel should explain the

advantages and disadvantages of proceeding to sentence review. The decision whether to proceed with the sentence review must be the client's own.

C. If the client decides to proceed to sentence review, counsel shall assist him or her in filing a timely application for sentence review.

D. Counsel shall gather and review all information relevant to the sentencing determination including, pre-sentence reports, and any other records, documents, or exhibits relevant to the review proceedings.

E. Counsel shall conduct an appropriate investigation and interview relevant witnesses.

F. Counsel shall make an evaluation as to whether the client's sentence is more or less harsh than sentences for similar offenses and shall determine what factors distinguish the client's case, either positively or negatively.

G. Counsel shall appear with the client at his or her sentence review hearing and present the witnesses, exhibits, and arguments that, in his or her professional judgment, are most likely to result in a sentence reduction.

XIII. STANDARDS FOR REPRESENTATION OF YOUTH IN YOUTH COURT PROCEEDINGS

GOALS:

A. To zealously defend youth charged with delinquency offenses and to protect their due process rights.

B. To serve the stated interest of the youth, be independent from the court and other participants in the litigation, including the youth's parents or guardians, and be unprejudiced and uncompromised in representing the youth.

C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the youth. Attorneys representing a client subject to youth court proceedings shall comply with the general standards for public defenders providing representation of an adult charged with violations of the criminal law, as well as the specific Standards contained herein.

D. To recognize that youth are at a critical stage of development and that skilled juvenile defense advocacy will positively impact the course of clients' lives through holistic and zealous representation.

1. TRAINING:

A. To be eligible for assignment to represent youth in youth court, counsel shall receive a minimum of twenty (20) hours of training in representing youth in youth court, and complete a minimum of ten (10) hours of supervised on-the-job training in the duties, skills, and ethics of representing youth in youth court.

B. Counsel shall be knowledgeable in the following areas:

a. Titles 41 (Montana Youth Court Act), 45 (Crimes) & 46 (Criminal Procedure), Montana Code Annotated;
b. Child and adolescent development;
c. The services and treatment options for youth both locally and statewide;
d. The role and makeup of youth placement committees and kids' management authorities (KMAs);
e. Local and state experts who are available to consult on youth court cases as well as perform evaluations of youth;
f. Pre-dispositional and dispositional services and programs available through the court and probation;
g. Brain development and the effect of neglect and trauma on brain development;
h. The juvenile justice and child welfare systems;
i. Substance abuse issues;
j. Mental health issues;
k. Special education laws, rights and remedies;
l. School related issues including school disciplinary procedures and zero tolerance policies.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers and other experts who understand the public defender's advocacy role to investigate the various health and social services that may be available to the youth in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the youth.

C. Counsel shall advise the youth of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall advocate the youth's express wishes and shall not substitute his or her judgment about what is in the best interests of the youth. The primary role of counsel is to represent the perspective of the youth alone and not that of the youth's best interests or of the youth's parents or guardian. Appointment of a guardian-ad-litem to investigate the best interests of the child is a matter within the exclusive province of the court.

E. Counsel shall ensure that children do not waive appointment of counsel. Counsel should be assigned at the earliest possible stage of the youth court proceeding. Furthermore, counsel shall actively represent the youth at all stages of the proceeding. When the public defender becomes aware of the assignment, the public defender shall meet with the youth as soon as possible and sufficiently before any scheduled hearing or proceeding, including the probable cause or detention hearing, to permit effective preparation.

F. When meeting with the youth for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall explain that he or she is not a member of the facility staff. Counsel shall inform the youth their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others, including the youth's parent or guardian, in order to preserve the attorney-client confidentiality. Counsel shall also inform the youth that he or she has a right to remain silent.

G. Counsel shall maintain the attorney-client privilege with the understanding that the attorney represents the youth alone and not the youth's parents or guardians. The potential for a conflict of interest between the accused juvenile client and his or her parents should be clearly recognized and acknowledged. Counsel should inform the parent that he or she is counsel for the youth and that in the event of a disagreement between a parent or guardian and the youth, counsel is required to serve exclusively the interest of the youth.

H. During the conference, counsel shall:
   a. Explain the charges and possible dispositions;
   b. Explain the youth court process, timelines, and the role of all the parties involved, such as judge, prosecutor, probation staff, guardian ad-litem, counsel, youth and parent;
   c. Inform the youth and parent not to make statements to anyone concerning the offense;
   d. Obtain signed releases by the youth and parent for medical and mental health records, school records, employment records, and other necessary records. Counsel should advise the youth of the potential use of this information and the privileges that attach to this information;
   e. Obtain information from the youth concerning the facts of arrest and charges and whether there were any statements made, witnesses, co-defendants, and other relevant information.

I. If the youth is detained, counsel must focus upon obtaining information relevant to the determination of pre-adjudication conditions of release. Such information should generally include:
   a. Youth's residence and length of time at the residence;
   b. Youth's legal custodian and physical custodian with names, addresses, and phone numbers;

c. Mental and physical health and employment background, if any;
d. School placement, status, attendance, and whether the youth qualifies for special education;
e. Whether the youth or the youth's family had previous contact with the youth court system and the outcome of that contact;
f. Adults possibly willing to assume responsibility for the youth;
g. Useful social information, including the youth's home behavior, school performance, involvement with special education services, past or present employment, and other information concerning the youth's ability to stay out of trouble if released, and the parent's ability to control and discipline the youth.

J. If counsel is unable to communicate with the youth because of language or other disability, counsel shall secure the assistance of such experts as are necessary to communicate with the youth.

K. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of informal adjustment under § 41-5-130, MCA.

L. Counsel shall actively prepare the youth for any interview with the youth probation officer and accompany the youth at any such interview.

M. If the court requires the posting of a bond, counsel should discuss with the youth and his or her parent or guardian the procedures that must be followed. Where the youth is not able to obtain release under the conditions set by the court, counsel should consider pursuing modifications of those conditions.

3. HANDLING THE CASE:

A. In preparation for the probable cause hearing, counsel should:
a. Review all evidence to identify relevant and meritorious pretrial motions;
b. Be fully informed of the rules of evidence, court rules, and the law with relation to all stages of the hearing process; be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudicatory hearing;
c. Be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review;
d. Be aware of the confidentiality provisions that pertain to youth court proceedings;
e. Prepare the youth and, when appropriate, the youth's parent or guardian, for the proceeding by explaining the process and that the probation officer may contact them to get information: stress the importance of providing the probation officer with factually accurate information.

B. During the probable cause hearing, counsel should use the testimony at the hearing as a discovery tool and elicit as much information as possible about the facts and circumstances of the case.

C. If probable cause is found, counsel shall argue for the least restrictive placement for the youth pending arraignment.

D. Counsel shall promptly investigate the case. Regardless of whether the youth wishes to admit guilt, counsel shall ensure that the charges in the disposition are factually and legally correct and that the youth is aware of any potential defense to the charges.

E. When conducting the investigation, counsel should:

a. Obtain the arrest warrant, petition, and copies of all charging documents in the case to determine the specific charges that have been brought against the youth;
b. Obtain the police reports and any other records, documents, and statements;
c. Research relevant law to determine the elements of the offenses charged and defenses available; interview all witnesses favorable and adverse and obtain any criminal or juvenile history of the witnesses;
d. Ascertain if there is physical evidence and make prompt requests to examine and view the crime scene if possible;
e. Determine whether an expert is needed to assist in preparation of the defense or to rebut the prosecution's case.

F. In preparation for the adjudicative hearing, counsel should review all statements, reports, and other evidence to determine whether motions are appropriate.

G. At the adjudicative hearing, counsel shall, where it benefits the youth, examine
and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence.

H. Counsel shall offer evidence favorable to the youth's case and present lay and expert witnesses, if available.

I. Prior to engaging in plea negotiations, counsel must ensure that the youth and parent understand the concept of plea bargaining in general, as well as the details of any specific plea offer made to him or her.

J. Counsel should make it clear to the youth that the ultimate decision to enter the plea has to be made by the youth.

K. Counsel should investigate and candidly explain to the youth the prospective strengths and weaknesses of the case for the prosecution and defense, including the

availability of prosecution witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication of delinquency.

L. Counsel should also ascertain and advise the youth of the court's practices concerning disposition, recommendations, and withdrawal of pleas or admissions.

M. Counsel's recommendation on the advisability of a plea or admission should be based on a review of the complete circumstances of the case and the youth's situation. Such advice should not be based solely on the youth's acknowledgement of guilt or solely on a favorable disposition offer.

N. The youth shall be kept informed of the status of the plea negotiations.

O. Where counsel believes that the youth's desires are not in the youth's best interest, counsel may attempt to persuade the youth to change his or her position. If the youth remains unpersuaded, however, counsel should assure the youth that he or she will defend the youth vigorously.

P. Notwithstanding the existence of ongoing plea negotiations with the prosecution, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to an adjudicatory hearing on the merits.

Q. Counsel should make sure that the youth is carefully prepared to participate in the procedures required and used in the particular court.

R. Counsel must also be satisfied that the plea is voluntary, that the youth understands the nature of the charges, that there is a factual basis for the plea or admission, that the witnesses are or will be available, and that the youth understands the right being waived.

S. Counsel must consider whether an admission will compromise the youth or the youth's family's public assistance or immigration status. If it does, the youth may need to reconsider the decision to plead.

T. Counsel should be aware of the effect the youth's admission will have on any other court proceedings or related issues, such as probation or school suspension.

U. In preparation for the disposition hearing, counsel should:
   a. Explain to the youth and parent or guardian, if applicable, the nature of the dispositional hearing, the issues involved, and the alternatives open to the court;
   b. Explain fully and candidly the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the youth's responsibilities under the proposed dispositional plan.

V. Counsel should be familiar with and consider:

a. The dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the youth's circumstances;
b. The official version of the youth's prior records, if any;
c. The position of the probation department with respect to the youth;
d. The prosecutor's sentencing recommendation;
e. Using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal service providers;
f. The collateral consequences attaching to any possible disposition;
g. Any victim impact statement to be presented to the court;
h. Requesting a continuance for disposition at a later date; and,
i. Securing the assistance of psychiatric, psychological, medical, or other expert personnel needed for the purposes of evaluation, consultation, or testimony with respect to the formation of a dispositional plan.

W. Counsel shall provide the youth with continuous legal representation throughout the youth court process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement, and sealing of records.

X. If counsel withdraws from representation of a youth following adjudication and disposition, counsel shall make all reasonable efforts to ensure that the youth is well represented in matters that stem from the youth's adjudication. This includes ensuring a smooth transfer of responsibility to new counsel or monitoring of the detention status, probation, treatment, and services provided an adjudicated youth.

4. YOUTH WHO ARE SUBJECT TO THE JURISDICTION OF THE DISTRICT COURT

A. To be eligible for assignment to represent youth who are prosecuted either under Section 41-5-206, MCA (filing in district court prior to formal proceedings in youth court) or Section 41-5-1602, MCA, (extended jurisdiction juvenile prosecution), counsel shall be qualified to represent adults charged with similar offenses and shall, in addition, have received a minimum of ten (10) hours of training and a minimum of five (5) hours of supervised on-the-job training on the handling of juvenile transfer cases.

B. In preparing for the transfer hearing or for a designation of extended jurisdiction, counsel of record shall:

a. Be aware of the statutory findings the court must make before transferring jurisdiction and the case law governing these findings;
b. Fully advise the youth of his or her right to a hearing and the possible consequence of transfer to youth court or remaining in the district court;

c. Investigate the offense with which the youth is charged sufficiently to address the question of whether the nature of the offense warrants prosecution in district court;
d. Investigate the issue of community protection by interviewing the youth's agents, teachers, counselors, psychologists, community members, probation officers, religious affiliates, employers, or any others who have knowledge of the youth and can speak to his or her lack of dangerousness;
e. Investigate the needs and stated interest of the youth, as well as the youth's circumstances;
f. Provide the youth with full information and legal advice sufficient for the youth to make decisions concerning the transfer issue;
g. Prepare to present evidence and testimony to prevent transfer, including testimony by people who can provide helpful insight into the youth's character and who have a positive personal and/or professional view of the youth; and,
h. Consider obtaining an independent evaluation from a defense expert.

XIV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – MENTAL ILLNESS

GOALS:

A. To actively and professionally serve as a zealous advocate for the respondent who is the subject to a commitment proceeding for a mental disorder under §53-21-116, MCA.

B. To abide by specific mandatory standards of representation for Public Defenders as attorney for the respondent in an involuntary commitment proceeding.

C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.

D. To exercise independent and professional judgment in carrying out the duties assigned by the Court and to participate fully in the case on behalf of the respondent.

E. The term "involuntary commitment" in the following standards includes involuntary commitment and proceedings to extend the involuntary commitment period.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law as well as the mental health system.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall receive a minimum of twenty (20) hours of training and complete a minimum of ten (10) hours of supervised on-the-job training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of treatment facilities including the Montana State Hospital. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of the classification of mental disorders and the ability to read and understand medical terminology related to mental disorders, developmental disabilities, chemical dependence and alcoholism. Counsel shall be familiar with the medications used to treat mental disorders, developmental disabilities, and alcoholism. Counsel shall be aware of how a particular mental disorder, developmental disability, chemical dependence or alcoholism will affect attorney-client communications and should recognize that communications may require special efforts on the part of counsel.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore various mental health and social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent find his or her objectives by advising him or her about the probability of success in pursuing these options. If the respondent expresses a desire to seek voluntary mental health treatment or related social services, counsel must give the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, not the perspective of the respondent's relatives, friends or guardian. In addition, counsel will not substitute his or her judgment about what is in the best interest of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an emergency detention or involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled

emergency detention proceeding or involuntary commitment hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other health care facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of an involuntary commitment or emergency detention petition;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the involuntary commitment petition or emergency detention;
c. Any information about past psychiatric hospitalization and treatment;
d. Information to aid the exploration of alternatives to commitment;
e. The name of a mental health professional of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the psychiatric examination and judicial hearing procedures;
b. Explain the respondent's rights in the commitment process, including the right to treatment, the right to refuse treatment, and the right to an independent evaluation;
c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
d. Explain the respondent's option to accept voluntary treatment, the procedures of exercising that option, and the legal consequences of voluntary admission to a mental health facility, including whether the respondent is willing to accept voluntary treatment in a mental health facility or other settings;
e. Obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney and with mental health professionals if the respondent is willing and able to give informed consent to voluntary mental health care or related social services as an alternative to involuntary commitment;
f. Discuss the desirability of a court hearing with the respondent; and,

g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records or incident reports.

J. After being notified of the appointment, counsel shall, in preparation of any scheduled hearing, do the following:

a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction, as well as case law and court rules;
b. Thoroughly review the petition, detention order, or other documents used to initiate proceedings, the screening report, the prehearing examination reports, the medical records of the respondent, the facility records of any facility in which the respondent has recently resided, and any other document relevant to the proceedings;
c. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition or emergency detention, including the petitioners, the police officers who detained the respondent, the psychiatrists, social workers, and other persons who have examined or treated the respondent during the current involuntary commitment or emergency detention proceedings, previous mental health treatment providers, if any; the respondent's family, guardian or acquaintances; and any persons who may provide relevant information or who may be supporting or adverse witnesses at an emergency detention or involuntary commitment hearing;
d. Facilitate the exercise of the respondent's rights to be examined by a professional person of the respondent's choice;
e. Discuss with the respondent the various medications that the respondent has been prescribed to address the respondent's mental illness, including the effectiveness of the medication, and the long-term effects and side effects of each.

K. Counsel must ensure that a respondent's consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to all respondents as part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to voluntary treatment, counsel shall:

a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary patient status, he or she was agreeing to enter or remain in a mental health facility or begin or continue to receive mental health services; and,
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

M. If counsel has determined that the respondent's consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceeding.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the conversion to voluntary patient status was made knowingly and voluntarily, he or she shall investigate the circumstances of the respondent's stated desire to voluntarily receive treatment.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that the respondent may exercise his or her right to a jury trial. Counsel shall inform the respondent of his or her right to a jury trial and explain the benefits and detriments of a jury trial and a hearing in front of the judge alone. Counsel shall immediately notify the court if respondent chooses a jury trial. If the respondent waives his or her right to a jury trial, counsel shall establish that the waiver is knowing and voluntary.

C. Counsel shall ensure that a respondent actively participates in every stage of the involuntary commitment process. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, emergency detention, commitment, conditional release, revocation or modification of a trial visit, outpatient or community commitment, or an extension of the commitment period, and how the court will determine the length of commitment.

D. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing, except when attending would seriously jeopardize the respondent's mental or physical condition and an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects upon the respondent's mental condition.

E. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

F. If, at the time of hearing, a respondent is under the influence of psychotropic or other prescribed medications, counsel should consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

G. Counsel should zealously and effectively engage in all aspects of trial advocacy.

H. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings, such as hospital and medical records.

I. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for detention or commitment have been met. Thus, in emergency detention proceedings, counsel shall seek to bifurcate the determination of whether there is probable cause for an emergency detention and the determination of the least restrictive setting for that detention. In involuntary commitment proceedings, counsel shall seek to bifurcate the determination of whether the respondent requires commitment and the post trial disposition hearing if it will advantage the respondent. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending criminal charges so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

J. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether the case for detention or commitment is based on dangerousness to self or to the person or property of others;
b. Whether there is any real factual basis for the determination of dangerousness;
c. The probability of dangerous behavior in the future;
d. How well the respondent is currently functioning and whether any indications of poor functioning are due to the respondent's social situation or to mental disorder;
e. Whether there is any useful purpose to hospitalization and whether possible alternatives exist or have been explored;
f. Whether mental health examinations and screenings were thorough;
g. Whether the respondent had recently been exhibiting abnormal or unusual behavior; and,
h. The factual basis of conclusory opinions about the respondent's suitability for detention or commitment under the applicable legal standards.

K. Counsel should be aware of the basis for and file a motion to seek release from custody in the form of a *writ of habeas corpus* when appropriate.

L. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent mental health expert who has examined the respondent, if possible.

M. After discussions with the respondent and with his or her consent, counsel shall present all favorable evidence available regarding appropriate alternatives to involuntary commitment including, but not limited to, voluntary mental health treatment and commitment to community-based mental health treatment and care.

N. Whether or not the commitment hearing, the post trial dispositional hearing, the detention proceeding, or the detention placement determination are bifurcated, counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceeding or part of the proceeding that constitutes the post trial dispositional hearing or detention placement determination.

O. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana State Hospital. Counsel should explore and consider offering evidence of the respondent's compliance with treatment, success in community treatment programs, and family support in the community.

P. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of an involuntary medication order. Counsel should explore and consider offering evidence regarding the medications that the respondent has found to be effective, as well as those medications which have not been effective or cause significant long-term or side effects.

Q. Counsel should consider the condition of the respondent in determining the degree to which the hearing procedures should conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel should argue strict application for the burden of proof and the law; at all times, counsel should endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

R. Counsel should provide continuity in representation for the respondent throughout the involuntary commitment process. If the court has ordered the involuntary commitment, counsel shall advocate for an appropriate treatment and discharge plan to be developed which is reasonably designed to achieve the end sought in the commitment order. The treatment plan should be tailored to the respondent's needs. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported by the record. The treatment plan should include the following elements;

a. All assessments of the respondent's problems and needs;
b. A brief description of the nature and effects of service and treatment already administered to the respondent;
c. A description of services and treatment to be administered, their possible side effects, and feasible alternatives, if any;

d. The identities of agencies and specific individuals who will provide the services and treatment in the future;
e. The settings in which the services and treatment will be provided;
f. A time table for attaining the goals or benefits of treatment or care to be administered;
g. A statement of the criteria for transition to less restrictive placements or for conditional or unconditional discharge from involuntary mental health services and treatment, as well as the date for transfer or discharge; and,
h. A statement of the least restrictive conditions necessary to achieve the purposes of hospitalization.

S. The discharge plan should include the following:
a. An anticipated discharge date;
b. Criteria for discharge;
c. Identification of the facility staff member responsible for discharge planning;
d. Identification of the community-based agency or individual who is assisting in arranging post-discharge services;
e. Referrals for financial assistance needed by the patient upon discharge; and,
f. Other information necessary to ensure an appropriate discharge and adequate post-discharge services.

T. Counsel who represented a respondent preceding and during a court hearing should make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains an involuntary patient or subject to a conditional release.

U. If counsel who represented the respondent during the commitment proceeding does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:
a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, court ordered release to alternative placement or treatment, and other available legal actions to contest commitment, as well as continued representation in proceedings to revoke conditional release, to extend conditions of release or the commitment period in a more restrictive setting, and other legal proceedings to extend commitment.
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

XV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – SERIOUS DEVELOPMENTAL DISABILITY

GOALS:

A. To actively and professionally serve as a zealous advocate for the respondent who is the subject of a proceeding for commitment or re-commitment as an individual with a serious developmental disability under §53-20-112, MCA.

B. To abide by mandatory standards of representation for public defenders as attorney for the respondent in an involuntary commitment proceeding.

C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.

D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.

E. In the following standards, "involuntary commitment" refers to both involuntary commitment and recommitment proceedings.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law as well as the developmental disabilities and mental health systems.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall receive a minimum of twenty (20) hours of training and complete a minimum of ten (10) hours of supervised on-the-job training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of treatment facilities including the Montana Developmental Center and community service providers and group homes within the area served by the public defender. Counsel shall utilize training and support provided by the office of the public defender.

C. Counsel shall have basic knowledge of the classification of developmental disorders and the ability to read and understand medical terminology related to developmental disabilities, mental illness, and co-occurring disorders or dual diagnosis. Counsel shall be familiar with the medications used to treat mental disorders and developmental disabilities. Counsel shall be aware of how a particular developmental disability, mental disorder, chemical dependency, or alcoholism will affect the attorney-client communications and shall recognize that communications may require assistance or special efforts on the part of counsel.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore developmental health and social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent determine the respondent's objectives by advising the respondent about the probability of success in pursuing those options.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, and not the perspective of the respondent's relatives, friends, or guardian. In addition, counsel shall not substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other health care facility, counsel shall make it clear to the respondent that he/she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve attorney-client confidentiality. Counsel should inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of the involuntary commitment;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the petition;
c. Information about past treatment either in the community or at the Montana Developmental Center or any past psychiatric hospitalization;
d. Information to aid the exploration of alternatives to commitment;

e. The name of a developmental disabilities expert of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the examination conducted by the residential facility screening team and judicial hearing procedures;
b. Explain the respondent's rights in the commitment process, including the right to treatment and the right to refuse treatment;
c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
d. Explain the respondent's option to accept voluntary health care or other services, the procedures to exercise that option, and the legal consequences of voluntary acceptance of such services; discuss whether respondent is willing to accept those voluntary services;
e. As an alternative to involuntary commitment, obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney if the respondent is willing and able to give informed consent to voluntary health or other services;
f. Discuss the desirability of a court hearing with the respondent; and,
g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records and incident reports.

J. After being notified of appointment to the case, counsel shall, in preparation of any scheduled hearing, do the following:

a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction, as well as case law and court rules;
b. Thoroughly review the petition or other documents used to initiate the commitment proceedings, the report of the residential facilities screening team, the report by the QMRP or other case manager, prehearing examination reports, the medical records of the respondent, and the facility records of any facility in which the respondent has recently resided and any other document relevant to the proceedings;
c. Consider the advisability of seeking the services of a qualified mental retardation professional;
d. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition:
    i. The petitioners;
    ii. The developmental disabilities professional, community services providers, facility staff, social workers, case managers, mental health professionals, and other persons who have examined or treated the respondent during the current involuntary commitment proceedings;

iii. Previous service providers, if any;
iv. The respondent's family, guardian or acquaintances;
v. The responsible person and the person's advocate, if any; and,
vi. The persons who may provide relevant information or who may be supporting or adverse witnesses at a commitment hearing.

e. Facilitate the exercise of the respondent's right to be examined by a professional person of the respondent's choice.

K. Counsel must ensure that a respondent's consent to receive voluntary services is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary services and care to all respondents as a part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to receive voluntary services, counsel shall:

a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary status, he or she was agreeing to enter or remain in services voluntarily; and
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion

M. If counsel has determined that the respondent's consent to receive voluntary services is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the voluntary commitment proceeding.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that a respondent actively participate in every stage of the involuntary commitment proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, commitment, or recommitment, and the length of commitment.

C. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing except in the following extraordinary cases:

a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
b. When attending would seriously jeopardize the respondent's mental or physical condition; or,

c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

D. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

E. If at the time of hearing, a respondent is under the influence of prescribed medications, counsel shall consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

F. Counsel shall zealously and effectively engage in all aspects of trial advocacy.

G. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings such as hospital and medical records.

H. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for commitment have been met. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending criminal charges, if any, so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

I. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether the case for commitment is based upon self-help deficits so severe so as to require total care;
b. Whether there is a real factual basis for the determination of these deficits that would prevent safe and effective habilitation in community-based services;
c. Whether the case for commitment is based on imminent danger to self or others;
d. Whether there is any real factual basis for the determination of imminent danger;
e. The probability of dangerous behavior in the future;
f. Whether any indications of poor functioning are due to the respondent's social situation or to a mental disorder;
g. Whether the information and the interpretation of that information relied upon by the residential facility screening team was accurate;
h. Whether health examinations and screenings were thorough;
i. Whether the respondent had recently been exhibiting abnormal or unusual behavior; and,
j. The factual basis of conclusory opinions about the respondent's suitability for commitment under the applicable legal standards.

J. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent developmental disabilities expert who has examined the respondent if possible.

K. After discussions with the respondent and with his or her consent, counsel shall present all evidence available that is favorable to the respondent regarding appropriate alternatives to involuntary commitment, including, but not limited to, the ability of the respondent to be served in the community, including the respondent's history of successful placement in the community, the availability of community-based services or other mechanisms to support the respondent in the community, including powers of attorney, guardianship or conservatorship.

L. Counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceeding.

M. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana Developmental Center. Counsel shall explore and consider offering evidence of the respondent's compliance with treatment, success in community treatment programs, and family and other support in the community.

N. Counsel shall consider the condition of the respondent in determining the degree to which the hearing procedures shall conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel shall argue strict application for the burden of proof and the law and at endeavor at all times to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

O. Counsel shall provide continuity in representation for the respondent throughout the involuntary commitment process. If the court has ordered involuntary commitment, counsel shall advocate for an appropriate individualized treatment plan to be developed, including a post-institutionalization plan which contains all the elements required by law and is tailored to the respondent's needs and is reasonably designed to maximize the resident's abilities and enhance the resident's ability to cope with the environment. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported by the record. The plan should include the following elements:

a. All assessments of the respondent's specific limitations and needs;
b. A description of intermediate and long range habilitation goals, with a projected timetable for their attainment;
c. A statement of and an explanation for the plan of habilitation necessary to achieve the habilitation goals of the resident;

d. A specification of the professionals and other staff members who are responsible for the particular resident's attaining these rehabilitation goals;
e. Criteria for release to less restrictive settings for habilitation, based on the resident's needs including criteria for discharge and a projected date for discharge.

P. Counsel who has represented a respondent preceding and during a court hearing shall make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains committed.

Q. If counsel who represented the respondent during the commitment proceedings does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:

a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, recommitment proceedings and other available legal actions to contest commitment;
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

XVI. REPRESENTATION OF A MINOR WHO IS VOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY UNDER §53-21-112, MCA

GOALS:

A. To actively and effectively represent minor children in proceedings where they or, if under the age of 16, their parents or guardian, have consented to mental health services treatment under §53-21-112, MCA, in an effective and professional manner throughout all phases of the representation.

B. To abide by specific mandatory standards of representation for public defenders as attorney for the minor.

C. To serve the stated interests of the minor, to be independent from the court and other participants in the litigation, including the minor's parents or guardian, and to be unprejudiced and uncompromised in representing the minor.

D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the minor.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent minors who have been voluntarily admitted to mental health services under §53-21-112, MCA, shall have a thorough understanding of involuntary commitment case law, statutes, and rules, as well as the mental health system.

B. To be eligible for assignment to represent minors who have been voluntarily admitted, counsel shall receive a minimum of five (5) hours of training, or the equivalent thereof, as certified by the Training Officer, completed the necessary hours for involuntary commitment training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of youth treatment facilities. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall be familiar with the public defender standards for representation of a respondent in a proceeding for involuntary commitment.

D. Counsel shall have basic knowledge of the classification of mental disorders and the ability to read and understand medical terminology related to mental disorders, developmental disabilities, alcoholism, and chemical dependency. Counsel shall be familiar with the medications used to treat mental disorders, developmental disabilities, alcoholism, and chemical dependency. Counsel shall be aware of how the minor's age, or a particular mental disorder, developmental disability, alcoholism, or chemical dependency will affect attorney-client communications and should recognize that communications may require special efforts on the part of counsel.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the minor's case and explore the range of mental health and social services that may be available to the minor in the minor's community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the minor.

C. Counsel shall advise the minor of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the minor determine his or her objectives by advising him or her about the probability of success in pursuing those options. If the minor expresses a desire to seek voluntary mental health treatment in a particular setting or related social services, counsel must give the minor the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the minor's express wishes. The primary role of counsel is to represent the perspective of the minor alone, and not the perspective of the minor's relatives, friends, or guardian. This is true regardless of the age of the minor. In addition, counsel will not substitute his or her judgment about what is in the best interest of the minor. To the extent that a minor is unable or unwilling to express personal wishes, counsel must presume that the minor wishes to reside in the least restrictive environment.

F. Counsel shall meet with the minor as soon as possible after notification of his or her assignment to represent the minor. This meeting shall be conducted in private and shall be held sufficiently before any scheduled legal proceeding to permit effective preparation and allow pre-hearing assistance to the minor.

G. When meeting with the minor for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the minor that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve the attorney-client confidentiality. Counsel shall also inform the minor client of the right to remain silent prior to the commencement of any court-ordered examination and that the minor cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the following:
   a. The circumstances that brought about the attorney's assignment, including the voluntary admission, the minor's age at admission, the extent to which the minor's parents or guardian participated in that decision, and the reason that the minor asked for counsel if that request brought about the assignment;
   b. The names, addresses, and telephone numbers of all persons with knowledge of those circumstances;
   c. Any information about the minor's past mental health treatment;
   d. Information to aid the exploration of the minor's choices for treatment;
   e. The name of a mental health professional of the minor's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:
   a. Explain what is happening and why, including a description of the judicial hearing if one is pending;
   b. Explain the minor's rights in that process as well as the minor's rights regarding voluntary admission to mental health services; and
   c. Explain that the minor may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender.

J. Immediately after being assigned, counsel should review the file and should inform other parties and other counsel of his or her assignment and that, as counsel of record, he or she should receive copies of any pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

K. Immediately after being assigned, counsel should meet with the minor adapting all communications to the minor's level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the minor about the court system, the proceedings, and counsel's responsibilities. Counsel should elicit and assess a minor's views and concerns of the case.

L. Counsel shall encourage and support the minor in maintaining contact with family members and friends if the minor so desires and when doing so would benefit the minor.

M. Counsel should thoroughly explain to the minor the requirements for a valid voluntary admission to a mental health facility under §53-21-111, MCA, and discuss all practical and legal considerations that flow from their admission.

N. If counsel believes it to be appropriate, counsel should seek to have a medical evaluation of the minor done by a qualified physician of the minor's choosing, and preserve said examination for further use on behalf of the minor.

O. Counsel should conduct thorough, continuing and independent investigations, including reviewing the minor's social service records, mental health records, if applicable, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

P. If the public defender was assigned to the case because there is an upcoming legal proceeding, such as an involuntary commitment proceedings, counsel will follow the appropriate public defender standards as well as these Standards.

Q. Counsel must ensure that a minor's consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to the client.

R. If the minor indicates that he or she would consent to voluntary treatment, counsel shall:

a. Determine whether the minor was indeed aware that by electing to receive voluntary patient status, he or she was agreeing to enter or remain in mental health services; and,
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

S. If counsel has determined that the minor's consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceeding.

T. When, due to the minor's disability, the effect of medication, or other factors, counsel is unable to determine that the consent to voluntary patient status was made knowingly and voluntarily, he or she shall investigate the circumstances of the minor's stated desire to voluntarily receive treatment.

3. HANDLING THE CASE:

A. In preparation for court hearings, counsel must thoroughly prepare for trial, the examination of both law and expert witnesses, submission of trial briefs and stipulations, and all evidentiary considerations.

B. At any court proceedings, counsel should present and cross examine witnesses, offer exhibits as necessary, introduce evidence where appropriate, make arguments on the minor's behalf, and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the minor's decisions about the representation with respect to each issue on which the minor is competent to direct counsel. Counsel should pursue the minor's expressed objectives.

C. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions if authorized by the client. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

D. Counsel should determine and advocate for, on behalf of the minor, the least restrictive alternatives to meet the needs and wishes of the minor.

E. After the initial disposition of the case, counsel should discuss the end of the legal representation with the minor and discuss all avenues of appeal and other assistance in the future on behalf of the minor.

F. When counsel's representation terminates, counsel shall cooperate with the minor and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

G. Counsel should provide continuity in representation for the minor. Counsel shall advocate for an appropriate treatment and discharge plan to be developed. The treatment plan should be tailored to the minor's needs. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported. The treatment plan should include the following elements:

a. All assessments of the minor's problems and needs;
b. A brief description of the nature and effects of service and treatment already administered to the minor;

c. A description of services and treatment to be administered, their possible side effects and feasible alternatives, if any;
d. The identities of agencies and specific individuals who will, in the future, provide the services and treatment;
e. The settings in which the services and treatment will be provided;
f. A time table for attaining the goals or benefits of treatment or care to be administered;
g. A statement of the criteria for transition to less restrictive placements, as well as the date for transfer or discharge; and,
h. A statement of the least restrictive conditions necessary to achieve the purposes of treatment.

H. The discharge plan should include the following:
a. An anticipated discharge date;
b. Criteria for discharge;
c. Identification of the facility staff member responsible for discharge planning;
d. Identification of community-based agency or individual who is assisting in arranging post discharge services;
e. Referrals for financial assistance needed by the patient upon discharge; and,
f. Other information necessary to ensure an appropriate discharge and adequate post discharge services.

I. Counsel who has represented a minor pursuant to §53-21-112, MCA, should make every effort to maintain responsibility for the minor's legal representation so long as the respondent remains a minor subject to a voluntary admission or involuntary commitment.

J. If counsel who represented the minor does not continue to represent the minor, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the minor's admission pursuant to §53-21-112, MCA. Specific objectives include:
a. A smooth transfer of responsibility to new counsel who assumes representation of the minor, including representation in matters including the periodic review of the minor's status; and,
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

XVII. REPRESENTATION OF PARENTS IN DEPENDENT/NEGLECT CASES

GOALS:

A. To actively, professionally, and zealously advocate for parents whose children are the subject of actions under the Child Abuse and Neglect laws of Montana and afford them every legal opportunity to preserve their parental rights.

B. To serve the state interest of the client and be independent from the court and other participants in the litigation, including the client's parents or guardians, and be unprejudiced and uncompromised in representing the client. Attorneys representing parents shall comply with the general standards for public defenders as well as these specific standards.

1. TRAINING:

A. To be eligible for assignment to represent parents in these court proceedings, counsel shall receive a minimum of sixteen (16) hours of training in representing parents of which at least four (4) hours were devoted to the Indian Child Welfare Act.

B. Counsel shall be knowledgeable in the following areas:

a. Legislation and case law on abuse and neglect, termination of parental rights, and adoption of children with special needs;
b. The causes and available treatments of child abuse;
c. Child welfare and family preservation services available in the community and the problems they are designed to address;
d. Services the State will and won't routinely pay for;
e. The structure and functioning of Child and Family Services of the Department of Public Health and Human Services;
f. Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts to maintain or return the child to the home;
g. Local and state experts who can provide attorneys with consultation and testimony of the special needs of Indian children and cultural differences;
h. Child and adolescent development;
i. Brain development and the affect of trauma on brain development;
j. Substance abuse issues;
k. Mental health issues; and
l. Disability issues.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the various health and social services that may be available to the parent in the community.

B. Counsel shall advise the parent of all available options, as well as the practical and legal consequences of those options.

C. If the client is a parent whose location is unknown, all standard means, such as telephone book, internet, and putative father registry, shall be used to locate the parent. Other parents who are available shall be consulted as to the location of the missing parent.

D. Counsel shall actively represent the client at all stages of the proceeding. When the public defender becomes aware of the assignment, the public defender shall meet with the client as soon as possible and sufficiently before any scheduled hearing or proceeding, including the show cause hearing, to permit effective preparation.

E. When meeting with the parent for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the parent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the parent that he or she has a right to remain silent.

F. During the conference, counsel shall:

a. Explain the issues and possible dispositions;
b. Explain the court process, timelines, and the role of all the parties involved, such as judge, prosecutor, guardian ad-litem, and parent;
c. Inform the parent not to make statements to anyone concerning the case without prior consultation with counsel;
d. Obtain signed releases for medical and mental health records, employment records, and other necessary records. Counsel should advise the client of the potential use of this information and the privileges that attach to this information;
e. Obtain information from the client concerning the facts and whether there were any statements made, witnesses, and other relevant information.

G. If counsel is unable to communicate with the client because of language or disability, counsel shall use the experts necessary to ensure the ability to communicate with the client.

3. HANDLING THE CASE:

A. Counsel should seek the most expedient and timely resolution of the proceeding possible while providing effective and zealous advocacy for the client. Counsel should only seek the continuance of any phase of the proceedings if it is necessary to effectively advocate for the client.

B. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in such proceedings, such as reports from agency employees, as well as substantive law in these proceedings.

C. In preparation for any proceedings such as show cause, adjudicatory or termination, counsel should:

a. Review the petition and all other evidence;
b. Prepare the client for the proceeding, explain the issues involved, and the alternatives open to the judge;
c. If the child has already been removed from the home, determine the basis for the removal;
d. Determine the actions taken by the State to investigate other possible actions to protect the child without removal, such as locating a non-custodial parent or relative, identifying services to address the needs of the parent and child, including intensive home-based services, and other services, such as disability support services.
e. Review all statements, documents, reports, and documentary evidence, including medical records, if any, and discuss these documents with the client;
f. Familiarize himself or herself with relevant law; and,
g. Interview all witnesses, favorable and adverse.

D. During any proceedings, counsel shall, where it benefits the client:

a. Examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence;
b. Offer evidence favorable to the client's case, if available; and,
c. Determine whether an expert is needed to assist in preparation of the parent's case.

E. During the show cause hearing, counsel shall examine witnesses as to:

a. Whether the agency has made all reasonable efforts to explore services that will allow the child to remain safely at home and avoid protective placement of the child;
b. Whether there are other responsible relatives or adults available who may be able to care for the child or provide additional supervision;
c. The accuracy of the facts contained in the petition or affidavit in support of intervention; and,

d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.

F. In preparation for an adjudicatory hearing, counsel shall:

a. Determine what actions the client has taken since the preliminary proceeding, if there was one, to address the concerns of the state as to the safety of the child, and discuss with the client the treatment or other services to which the client would voluntarily agree;
b. Investigate whether the agency made reasonable efforts to prevent the need for placement and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services, and whether the agency has taken prompt steps to evaluate relatives as possible caretakers.

G. At the adjudicatory hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses, and challenge other non-testimonial evidence regarding:

a. The accuracy of the facts presented by the State to prove abuse or neglect of the child;
b. Factual basis of opinions presented by the State to prove abuse or neglect of the child;
c. Whether the agency failed to provide services that would have allowed the child to stay safely in the home;
d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation. In addition, after consultation with the client, counsel shall consider offering evidence to the court of treatment or services in which the client would voluntarily participate to obviate the need for a treatment plan or, if a treatment plan is ordered, to include in the treatment plan. Counsel shall challenge conditions in the treatment plan that are not justified or supported by the record.

H. Prior to making admissions or stipulations or agreeing to voluntarily place the child or relinquish any right to visitation with the child, counsel must:

a. Ensure that the client understands the consequences of such a decision;
b. Make it clear to the client that the ultimate decision to make the admission or voluntarily place the child has to be made by the client;
c. Investigate and candidly explain to the client the prospective strengths and weaknesses of the case, including the availability of the State's witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication;
d. Be satisfied that the admission is voluntary, that there is a factual basis for the admission, and that the client understands the right being waived; and,

e. Be aware of the effect the client's admission will have on any other court proceedings or related issues.

I. Counsel's recommendation on the advisability of an admission should be based on a review of the complete circumstances of the case and the client's situation.

J. Where counsel believes that the client's desires are not in the client's best interest, counsel may attempt to persuade the client to change his or her position. If the client remains unpersuaded, however, counsel should assure the client he or she will defend the client vigorously.

K. Notwithstanding the existence of ongoing negotiations with the State, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to a hearing on the merits.

L. In preparation for a disposition hearing, counsel should:

a. Determine what actions the client has taken since the adjudicatory proceedings to address the concerns of the State as to the safety of the child;
b. Investigate what the agency has done to explore services that will allow the child to remain safely at home; and,
c. Determine what sort of disruption that the removal of the child has caused the child and the family.

M. In the disposition hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether, if the agency objects to placing the child with the parent, the agency sufficiently explored and provided services that would have allowed the child to reside safely in the parent's home;
b. Whether the agency appropriately considered the non-custodial parent or other family members as caretakers; and,
c. The factual basis of the agency's recommendations for placement outside of the home.

N. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.

O. In preparation for a permanency hearing,and, if parental rights have not been terminated, counsel should:

a. Keep in contact with the client and determine what actions the client has taken to address the concerns of the State as to the safety of the child;
b. Investigate what the agency has done to explore services that will allow the child to live safely with the parent; and,
c. Determine what sort of disruption the removal of the child has caused the child and the family.

P. In preparation for a parental rights termination proceeding, counsel should:
   a. Determine what actions the client has taken to address the concerns of the State as to the safety of the child;
   b. Investigate what the agency has done to explore services that will allow the child to remain safely in the home; and,
   c. Determine what sort of disruption that the removal of the child has caused the child and the family.

Q. In a parental rights termination proceeding, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:
   a. Whether the statutory grounds for termination have been met;
   b. Whether termination is in the best interest of the child;
   c. Whether the agency made reasonable efforts to prevent the need for termination and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services;
   d. Whether the treatment plan, if one was required, was appropriate.

XVIII. REPRESENTATION OF A RESPONDENT IN A GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING

GOALS:

A. To advocate zealously and professionally for the respondent who is the subject of a guardianship or conservatorship proceeding.

B. To abide by mandatory and specific standards of representation for public defenders as attorney for the respondent in a guardianship or conservatorship proceeding.

C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.

D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.

E. Ensure that a guardianship, if ordered, encourages the development of maximum self-reliance and independence of the respondent, and is ordered only to the extent that the respondent's actual mental and/or physical limitations require.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent respondents in a guardianship or conservatorship proceeding should have a thorough understanding of the law governing guardianship or conservatorship proceedings, as well as the social services, health care services, and other supports or legal arrangements, including powers of attorney, trusts, and advanced directives that, if employed, may obviate the need for guardianship or conservatorship.

B. To be eligible for assignment to represent respondents in guardianship or conservatorship proceedings, counsel shall receive a minimum of four (4) hours of training, or the equivalent thereof as certified by the Training Officer, completed the necessary hours for involuntary commitment in the duties, skills, and ethics of the representation of respondents. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of various mental and physical illnesses and disabilities, including mental illness and developmental disabilities, the features of those disabilities and illnesses, and the available treatments. Counsel should also have the ability to read and understand medical terminology related to these disabilities. Counsel should be aware of how a particular disability, illness or condition will affect the attorney-client communications and shall recognize communications may require additional efforts on the part of counsel. Counsel should also have familiarity with people with disabilities who function independently using alternative and less intrusive supports such as powers of attorney, trustees, and payees.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore various social and health care services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on the knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options. If for any reason counsel believes that the respondent may have difficulty understanding or retaining information, counsel shall also provide this information in written format or any other alternative format that would assist the respondent to understand and retain the information and provide the same information to any advisor the ward authorizes to receive the information.

D. Counsel shall help the respondent determine his or her objectives by advising him or her about the probability of success in pursuing those options. If the respondent expresses a desire to seek social services or other support that would obviate the need for

guardianship or conservatorship, or would support the respondent to the extent that only limited guardianship or conservatorship would be warranted, counsel must give the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent and not to substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel shall advocate the position that best safeguards and advances the respondent's interests in liberty.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to a guardianship or conservatorship proceeding case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearings to permit effective preparation and allow pre-hearing assistance to the respondent, including but not limited to, allowing time to interview the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a healthcare or residential facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel should inform the respondent that he or she has the right to remain silent prior to the commencement of and during any court ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel should obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of a guardianship or conservatorship petition;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the guardianship or conservatorship petition;
c. Any information about past hospitalization and treatment;
d. Information about past guardianships, conservatorships, payeeships, valid or void durable powers of attorney, or other forms of substituted judgment to which the respondent may have been subject;
e. Information to aid the exploration of alternatives to guardianship or conservatorship;
f. Preferences for a guardian or conservator and any past conflicts or financial relationships between the person or persons seeking to be appointed guardian or conservator and the respondent;
g. The income and assets that the respondent is aware that he or she owns, any concerns that the respondent has about the management of those assets, any gifts or transfers in trust to the proposed guardian or conservator or others that the respondent has made at any time within the

last ten years, any provisions the respondent has made for the transfer by gift or inheritance of his or her assets to anyone, any obligation or desire the ward has to support others, any wishes the ward has for the priority in the use of his or her assets and any other information that may help counsel understand the ability of the ward to understand, identify, direct the management of and select the natural successors in interest to his or her assets. If the respondent has a deteriorating condition, counsel should consider tape recording or otherwise preserving this conversation in detail, including when, where, and with whom it occurred.

I. During the conference, counsel shall also:
   a. Explain what is happening and why, including the basis on which the guardianship or conservatorship is sought, and offer a description of the court appointed physician's examination, the visitor's interview, and judicial hearing procedures;
   b. Explain the respondent's rights in the process;
   c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender and the financial ramifications of each choice;
   d. Explain the respondent's option to accept community services or supports as well as the legal options, including powers of attorney, use of payees, the formation of trusts, or the issuance of advance directives that may obviate the need for guardianship or conservatorship, the procedures of exercising these options and the legal consequences of these decisions;
   e. Obtain his or her consent to enter into negotiations for settlement of the case with the petitioner if the respondent is willing and able to receive services or supports, or enter into other legal arrangements as an alternative to guardianship or conservatorship;
   f. Discuss the desirability of a court hearing with the respondent; and,
   g. Request the respondent's written or oral permission to obtain access to relevant records.

J. After being formally appointed, counsel shall, in preparation of any scheduled hearing, do the following:
   a. Become thoroughly familiar with the statutory requirements governing guardianship and conservatorship in the jurisdiction as well as case law and court rules;
   b. Thoroughly review the petition or other documents used to initiate the proceedings, the visitor's report, the court appointed physician's report, the medical records of the respondent, and any other document relevant to the proceedings;
   c. Attempt to interview all persons who have knowledge of the circumstances surrounding the guardianship or conservatorship proceeding petition, including, but not limited to, the following:
      i. The petitioner(s);
      ii. The proposed guardian(s);

iii. The health care professionals or social workers, who have recently examined or treated the respondent;
iv. Previous treatment providers, if any;
v. The respondent's family, friends, partners, or acquaintances; and,
vi. Persons who may provide relevant information or who may be supporting or adverse witnesses at a hearing.

d. Obtain a medical examination of the respondent sufficiently thorough to rule out treatable health conditions that may be responsible for any cognitive impairments or behavioral deficits.

K. Counsel must ensure that a respondent's consent to voluntary services or supports, or to entering into legal arrangements as an alternative to guardianship or conservatorship, is known and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of each as part of counsel's efforts to make the respondent aware of all options available to him or her.

L. If the respondent indicates that he or she would consent to voluntary services or supports, or to entering into legal arrangements as an alternative to guardianship or conservatorship, counsel shall:

a. Ascertain whether the respondent was indeed aware of the consequences of electing to do so; and,
b. Make certain that this agreement was not the product of threats, unrealistic promises, or other forms of coercion.

M. If counsel has determined that the respondent's consent to voluntary services or supports, or to entering into legal arrangements, is not knowingly and uncoerced, counsel shall immediately take steps to arrange such services or draft such legal documents and to request dismissal of the guardianship or conservatorship proceeding.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the consent to voluntary services or supports, or to entering into legal arrangements, was made knowingly and voluntarily, he or she shall investigate the circumstances of the respondent's stated desire.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the guardianship or conservatorship proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that the respondent may exercise his or her right to a jury trial. Counsel shall inform the respondent of his or her right to a jury trial and explain the benefits and detriments of a jury trial, and a hearing in front of the judge alone. Counsel shall immediately notify the court if the respondent chooses a jury trial.

If the respondent waives his or her right to a jury trial, counsel shall establish that the waiver is knowing and voluntary.

C. Counsel shall ensure that a respondent actively participates in every stage of the guardianship or conservatorship proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings.

D. Counsel shall avoid using his or her authority to waive the respondent's presence at the hearing except in the following extraordinary cases:

a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
b. When attending would seriously jeopardize the respondent's mental or physical condition; or,
c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

E. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

F. If at any time of the hearing a respondent is under the influence of prescribed medications, counsel should consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

G. Counsel should zealously and effectively engage in all aspects of trial advocacy.

H. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in guardianship or conservatorship proceedings, such as medical records, legal records arising in attorney-client conversations, wills, advance directives, durable powers of attorney, oral gifts, transfers in trust, and financial records, among others.

I. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for incapacity of the ward have been met. Thus, counsel shall seek to bifurcate the determination of the ward's incapacity with the determination of the identity of the guardian or conservator.

J. During the guardianship or conservatorship hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether the case for guardianship or conservatorship is based on:
    i. The respondent's lack of sufficient understanding or capacity to make or communicate responsible decisions concerning the respondent's personal care including safe living arrangements;

ii. The impairment of the respondent's judgment so that the respondent is not capable of realizing and making rational decisions regarding medical or mental health treatment or handling day to day financial matters, or complex business or contract maters; or,
iii. The respondent's susceptibility to exploitation.

b. Whether there is any real factual basis for the petition;
c. How well the respondent is currently functioning and whether any indications of poor functioning are due to the respondent's social situation, income, or factors other than the prospective incapacity;
d. Whether possible alternatives have been explored, including community supports through Meals on Wheels, in-home care, personal care attendants, visiting nurses, durable powers of attorney, payeeship, and trusts, among others;
e. Whether a limited or temporary guardianship or conservatorship or protective order has been explored;
f. Whether health examinations were thorough;
g. Whether the respondent had recently been exhibiting abnormal or unusual behavior;
h. The factual basis of conclusory opinions about the respondent's incapacity;
i. Whether the proposed guardian or conservator is qualified to serve in that role;
j. Whether the respondent approves of the proposed guardian or conservator; and,
k. Whether the proposed guardian or conservator has a conflict of interest based on past gifts, transfers, disputes, financial or familial relationships, business dealings or partnerships, proposed inheritance, or otherwise.

K. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the respondent's incapacity under the applicable legal standards.

L. After discussions with the respondent and with his or her consent, counsel shall present all evidence available regarding appropriate alternatives to full guardianship or conservatorship, including, but not limited to, voluntary community support and health care services and legal arrangements including powers of attorney, trusts, and advance directives.

M. Counsel shall offer all evidence available that is favorable to the respondent regarding the least restrictive guardianship, such as a limited guardianship, temporary guardianship, or protective order.

N. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of appointing a full guardian, the most restrictive guardianship available.

O. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of the limitation of any civil or political rights of the respondent, including, but not limited to, the right to make medical decisions, including end of life decisions, the right to privacy, including the right to make family decisions including marriage, parenting, and relationships, the right to association, the right of free speech and expression, the right to make or change a will, and the right to vote.

P. Counsel should consider the condition of the respondent in determining the degree to which the hearing procedures should conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel should argue strict application for the burden of proof and the law and, at all times, endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record and the law.

Q. Counsel should provide continuity in representation for the respondent throughout the guardianship or conservatorship process. If the court orders a guardianship or conservatorship, counsel shall make every attempt to ensure that the order explicitly and narrowly defines the rights restricted by the guardianship and conservatorship.

R. Counsel shall also make every attempt to ensure that the guardianship or conservatorship order is fashioned to encourage the development of maximum self-reliance and independence of the respondent and is only as broad as is necessary given the respondent's actual mental and/or physical limitations.

S. Counsel shall seek to submit testimony or other evidence regarding the ward's preferred living situations, preferred treatment options, the sale or disposition of his or her home, cars, ranch, business or other assets of significant value. To the extent feasible, counsel should make the wishes of the ward clear to the court and the appointed guardian or conservator to provide direction in the future management of the ward or the ward's estate.

T. Counsel shall also request that the court calendar an immediate ninety (90) day inventory, annual accountings, guardian annual reports, and other matters, including court review and approval of any anticipated sale or dispersal of significant assets of the respondent, especially plans to "spend down" those assets to qualify the respondent for governmental benefits, to ensure that should a guardian or conservator be appointed, the guardian or conservator does not proceed without appropriate court supervision. In addition, counsel shall request that the court prohibit the guardian from receiving compensation from the ward or ward's estate unless the guardian has provided prior notice to the court and all interested parties of the rate of compensation, and for what services the compensation will be paid.

XIX. REPRESENTATION OF PERSONS IN A PROCEEDING TO DETERMINE PARENTAGE UNDER THE UNIFORM PARENTAGE ACT (§40-6-119, MCA)

GOALS:

A. To actively and effectively represent clients in proceedings to determine parentage under §40-6-119, MCA, in an effective and professional manner throughout all phases of the case.

B. To serve the interest of the client and to be independent from the court and other participants in the litigation and be unprejudiced and uncompromised in representing the client.

C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf on the client.

1. TRAINING AND COMPETENCY:

A. Absent a knowing and intelligent waiver by the party represented, all attorneys who represent parties in proceedings under the Parentage Act must receive a minimum of two (2) hours of training specific to the representative of punitive parents under the Act.

B. All attorneys must have a working knowledge of the Uniform Parentage Act, statutes, and rules, as well as cases interpreting and applying them.

C. In addition to basic legal knowledge, the attorney must have and continue to develop basic trial skills, basic advocacy skills, relevant motion practice, and a sufficient understanding of writ and appellate practice to advise a client whether and how to seek such remedies and to protect the record in the District Court.

2. HANDLING THE CASE:

A. Counsel should accept the appointment with the full understanding of the issues and functions to be performed. If counsel considers parts of the appointment to be confusing or incompatible with his or her ethical duties, counsel should inform the court of the conflict and ask the court to clarify or change the terms of the appointment.

B. Immediately after being appointed, counsel should review the file and should inform other parties and other counsel of his or her appointment, and that as counsel of record he or she should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

C. Immediately after being appointed, counsel should meet with the punitive parent, adapting all communications to the client's level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the client about the court system, the proceedings, and counsel's responsibilities. Counsel should illicit and assess a client's views and concerns of the case.

D. Counsel should develop a theory or strategy of the case to implement at hearings, including presentation of factual and legal issues.

E. Counsel should conduct thorough, continuing, and independent investigations, including reviewing the client's social service records, mental health records, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

F. Counsel should conduct exhaustive discovery including, where necessary, depositions, written interrogatories, production of documents, subpoena *duces tecum*, physical examinations, and requests for admissions.

G. In preparation for court hearings, counsel needs to complete exhaustive trial preparation, witness preparation of both lay and expert witnesses, preparation of trial briefs and stipulations, and all evidentiary considerations.

H. Counsel should stay apprised of other court proceedings affecting the client, the parties, and other household members.

I. Counsel should attend meetings involving issues within the scope of the case and take any necessary and appropriate action to expedite the proceedings.

J. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

K. Counsel should file or make petitions, motions, responses, or objections when necessary.

L. At any court proceedings, counsel should present and cross-examine witnesses and offer exhibits as necessary and, where appropriate, introduce evidence and make arguments on the client's behalf and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the client's decisions about the representation with respect to each issue on which the client is competent to direct counsel. Counsel should pursue the client's expressed objectives, unless the client's objectives violate counsel's ethical duties or responsibilities as an officer of the Court.

M. After the initial disposition of the case, counsel should discuss the end of the legal representation with the client and discuss all avenues of appeal and other assistance in the future on behalf of the client.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

XX. REPRESENTATION OF PARENTS OR A GUARDIAN IN A PROCEEDING FOR THE INVOLUNTARY COMMITMENT OF A DEVELOPMENTALLY DISABLED PERSON

GOALS:

A. To actively and effectively represent the parents or guardian of a disabled person in a proceeding for the involuntary commitment of that person and to provide for the protection of their procedural rights pursuant to §53-20-112, MCA.

B. To serve the best interests of the parents or guardian and to be independent from the court and other participants in the litigation and be unprejudiced and uncompromised in representing them.

C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the parents or guardian.

1. TRAINING AND COMPETENCY:

A. All attorneys representing parents or guardians of a disabled person who are the subject of a petition for involuntary commitment must have completed the minimum hours of training for involuntary commitment and developmentally disabled respondents, before being assigned the representation of such parents/or guardian.

B. Counsel should be familiar with all relevant statutes, rules, and case laws regarding and related to involuntary commitments in Montana.

C. In addition to basic legal knowledge, the attorneys must have and continue to develop basic trial skills, basic advocacy skills, relevant motion practice, and a sufficient understanding of writ and appellate practice to advise the parents or guardians whether and how to seek such remedies and to protect the record in the District Court.

D. Counsel should be familiar with the public defender standards for representation of a respondent in a proceeding for involuntary commitment.

2. HANDLING THE CASE:

A. Counsel should accept the appointment with the full understanding of the issues and functions to be performed. If counsel considers parts of the appointment to be

confusing or incompatible with his or her ethical duties, counsel should inform the court of the conflict and ask the court to clarify or change the terms of the appointment.

B. Immediately after being appointed, counsel should review the file and should inform other parties and other counsel of his or her appointment, and that as counsel of record he or she should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

C. Immediately after being appointed, counsel should meet with the parents or guardian of the respondent, adapting all communications to their level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the parents or guardian about the court system, the proceedings, and counsel's responsibilities. Counsel should illicit and assess the parents or guardians views and concerns of the case.

D. Counsel should be aware of and protect all of the procedural rights guaranteed under §53-20-112, MCA, including:

a. The right to be present at any hearing held pursuant to §53-20-101;
b. Offer evidence and cross-examine witnesses at any hearing; and,
c. Have the respondent examined by a professional person of his or her choice.

E. Counsel should thoroughly explain to the parents or guardian the contents of the petition for commitment and discuss all practical and legal considerations that flow from the petition.

F. If the petition provides a medical report, counsel should ascertain whether the physician indicates on the report his or her qualifications and that those qualifications are appropriate to make the recommendation regarding capacity or incapacity contained in the report.

G. If counsel believes it to be appropriate, or the parents or guardian request it, counsel should seek to have a medical evaluation of the disabled person completed by a professional person of their choice, and preserve said examination for further use on behalf of the respondent.

H. Counsel should conduct thorough, continuing, and independent investigations, including reviewing the respondent's social service records, mental health records, if applicable, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

I. Counsel should determine whether or not the respondent has an existing trust or durable power of attorney which may be relevant.

J. Counsel should be knowledgeable about all other alternatives and types of medical treatment for the respondent's disability and of the type and duration of treatment requested by the petition.

K. In preparation for court hearings, counsel needs to complete exhaustive trial preparation, witness preparation of both lay and expert witnesses, preparation of trial briefs and stipulations, and all evidentiary considerations.

L. Counsel should stay apprised of any other court proceedings affecting the respondent, the parties, or other household members.

M. If the client is a parent whose location is unknown, all standard means, such as telephone book, internet, and punitive father registration, shall be used to locate the parent. Other parents or guardians who are available should be consulted as to the location of the missing parent. Counsel should use all due diligence in locating said missing parent.

N. At any court proceedings, counsel should present and cross-examine witnesses and offer exhibits as necessary, introduce evidence where appropriate, and make arguments on the parents' or guardian's behalf and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the parents' or guardian's decisions about the representation with respect to each issue on which the parents or guardians are competent to direct counsel. Counsel should pursue the parents or guardians expressed objectives, unless their objectives violate counsel's ethical duties or responsibilities as an officer of the court.

O. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

P. Counsel should determine and advocate for, on behalf of the parents or guardians, whatever treatment alternatives meet the wishes of the parents or guardians. If counsel has reason to believe that the parents or guardians legitimate interests require investigation, counsel should request appropriate alternatives as may be allowed by the court.

Q. After the initial disposition of the case, counsel should discuss the end of the legal representation with the parents or guardians and discuss all avenues of appeal and other assistance in the future on their behalf.

a. When counsel's representation terminates, counsel shall cooperate with the parents or guardians and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

XXI. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – ALCOHOLISM

GOALS:

A. To actively and professionally act as a zealous advocate for the respondent who is the subject of a proceeding for commitment as an individual with alcoholism under §53-24-301 and 302, MCA.

B. To abide by mandatory standards of representation for Public Defenders as attorney for the respondent in a referral or an involuntary commitment proceeding.

C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.

D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.

E. In the following standards, an involuntary commitment refers to both involuntary commitment and recommitment proceedings.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law, as well as the specifics of §53-24-303 and 304, MCA, and of the chemical dependency and mental health systems.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall receive a minimum of eight (8) hours of training and complete supervised on-the-job training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of treatment facilities, including the Montana Chemical Dependency Center, community service providers, and sober living group homes within the area served by the public defender. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of alcoholism and chemical dependence and the ability to read and understand medical terminology related to chemical dependence, addiction, alcoholism, and the medical and recovery treatment models. Counsel shall be familiar with the medications used to treat alcoholism, addiction, and

chemical dependence. Counsel shall be familiar with the roles of intervention, treatment, voluntary abstinence, and support groups in long-term abstinence and recovery. Counsel shall be aware of how chemical dependence, addiction, or active alcoholism will affect attorney-client communications and shall recognize that effective communication may require special efforts on the part of counsel.

D. Counsel should be familiar with other resources for persons who are addicted to alcohol or other drugs available either within the area served by the public defender or reasonably accessible by respondents. Included in these resources are recovery programs, such as twelve step recovery programs, public and private medical and treatment facilities. Counsel should be familiar with the local recovery community and locate resources and supports for respondents.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers, chemical dependency counselors, mental health professionals, and health care professional who understand the public defender's advocacy role to investigate the respondent's case and explore treatment, self-help, and support groups, as well as social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent determine the respondent's objectives by advising the respondent about the probability of success in pursuing those options. If the respondent expresses a desire to seek voluntary treatment or related social services, counsel must given the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, and not the perspective of the respondent's relatives, friends or guardians. In addition, counsel shall not substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation if appropriate. If the first meeting takes place in a healthcare or a detention facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that confidentiality. Counsel shall also inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of the involuntary commitment;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the petition;
c. Information about past treatment at any public or private treatment facility, medical detoxification facility, or any past psychiatric hospitalization;
d. Information to aid the exploration of alternatives to commitment;
e. The name of a chemical dependency expert or addictions medicine specialist of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the examination conducted by the physician and judicial hearing procedures;
b. Explain the respondent's rights in the commitment process, including the right to treatment, the right to refuse treatment, and the right to an examination by a licensed physician of the respondent's choice;
c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
d. Explain the respondent's option to accept voluntary treatment, the procedures to exercise that option, and the legal consequences of voluntary admission to a treatment facility; discuss whether the respondent is willing to accept voluntary treatment in a treatment facility;
e. Obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney and with chemical dependency professionals if the respondent is willing and able to give informed consent to voluntary care of related social services as an alternative to involuntary commitment;
f. Discuss the desirability of a court hearing with the respondent; and,
g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records and incident reports.

J. After being notified of appointment to the case, counsel shall, in preparation of any scheduled hearing, do the following:

a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction as well as case law and court rules;
b. Thoroughly review the petition or other documents used to initiate the commitment proceedings, any affidavits or statements in support thereof, the certificate of the examining physician, pre-hearing examination reports, the medical records of the respondent, the facility records of any facility in which the respondent has recently resided and any other document relevant to the proceedings.
c. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition:
    i. The petitioner(s);
    ii. The certifying physician, facility staff, social workers, mental health professionals, and other persons who have examined or treated the respondent during the current or any known previous involuntary commitment proceedings;
    iii. Previous service providers, if any;
    iv. The respondent's family, guardian or acquaintances;
    v. Any law enforcement, emergency response or intervention personnel who may have previously been involved with respondent;
    vi. Any persons who may provide relevant information or who may be supporting or adverse witnesses at a commitment hearing.
d. Facilitate the exercise of the respondent's right to be examined by a professional person of the respondent's choice.

K. Counsel must ensure that the respondents consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to all respondents as a part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to voluntary treatment, counsel shall:

a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary status, he or she was agreeing to enter or remain in a health care facility; and,
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

M. If counsel has determined that the respondents consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceedings.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the conversion to voluntary patient status was

made knowingly and voluntary, he or she shall investigate the circumstances of the respondent's stated desire to voluntarily receive treatment.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that a respondent actively participates in every stage of the involuntary commitment proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, commitment, or recommitment, and the length of commitment.

C. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing except in the following extraordinary cases:

a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
b. When attending would seriously jeopardize the respondent's mental or physical condition; or,
c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

D. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

E. If, at the time of hearing, a respondent is under the influence of prescribed medications, drugs of abuse of alcohol, counsel shall consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

F. Counsel shall zealously and effectively engage in all aspects of trial advocacy.

G. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings, such as hospital and medical records.

H. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for commitment have been met. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending

criminal charges, if any, so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

I. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether there has been shown by clear and convincing evidence a real factual basis for determination that respondent is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages;
b. Whether there has been shown by clear and convincing evidence real factual basis for determination that respondent has threatened, attempted, or inflicted physical harm on another and, unless committed, respondent is likely to inflict physical harm on another;
c. Whether there has been shown by clear and convincing evidence a real factual basis for the determination or is incapacitated by alcohol of imminent danger;
d. The factual basis of conclusory opinions about the respondent's suitability for commitment under the applicable legal standards; and,
e. Whether there has been shown by clear and convincing evidence a real factual basis to determine that the department is able to provide adequate and appropriate treatment for the respondent and that the treatment is likely to be beneficial.

J. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent addictions medicine expert, physician or chemical dependency counselor who has examined the respondent, if possible.

K. After discussions with the respondent and with his or her consent, counsel shall present all evidence available that is favorable to the respondent regarding appropriate alternatives to involuntary commitment, including, but not limited to, the availability of private treatment resources, the respondent's history of successful placement in the community, the availability of community-based services or other mechanisms to support the respondent in the community.

a. Counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceedings;
b. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana Chemical Dependency Center or other approved public treatment facility. Counsel shall explore and consider offering evidence of the respondent's compliance with previous treatment, success in community treatment programs, and family and other support in the community.

L. Counsel shall consider the condition of the respondent in determining the degree to which the hearing procedures shall conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel shall argue strict application for the burden of proof and the law and, at all times, endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

M. Counsel shall provide continuity in representation for the respondent throughout the involuntary commitment process.

N. Counsel who has represented a respondent preceding and during a court hearing shall make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains committed.

O. If counsel who represented the respondent during the commitment proceeding does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:

a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, recommitment proceedings, and other available legal actions to contest commitment; and
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

§40-6-119, MCA, 101
§41-5-130, MCA, 63
§41-5-1602, MCA, 66
§41-5-206, MCA, 66
§46-14-311, MCA, 46
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§46-8-103 MCA, 55
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§53-21-116, MCA, 67
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Office of the State Public Defender

STAFFING REPORT
as of 6/30/10

Region	Location	Regional Deputy Public Defenders	Current Number of Staff (FTE)		Number of Vacant Positions		FY 2010 Budget	Number of Contractors by Region**
			Attorney	Non-Attorney	Attorney	Non-Attorney		
	Central Office	-	4.00	12.75			16.75	
1	Kalispell	1.00	15.00	9.00			25.00	23
2	Missoula	1.00	21.50	13.00			35.50	39
3	Great Falls	1.00	10.00	9.00			20.00	24
4	Helena	1.00	8.50	4.00			13.50	8
5	Butte	1.00	8.00	6.00			15.00	5
6	Havre	1.00	1.00	2.00			4.00	9
7	Lewistown	1.00	-	1.50			2.50	16
8	Bozeman	1.00	10.00	7.50			18.50	22
9	Billings	1.00	15.75	12.00			28.75	36
10	Glendive	1.00	1.00	1.00			3.00	9
11	Miles City	1.00	1.00	2.00			4.00	19
	Major Crimes	-	4.00	1.00			5.00	
Subtotal		**11.00**	**99.75**	**80.75**	**0.00**	**0.00**	**191.50**	
	Appellate Defender	-	6.00	2.00	1.00	-	9.00	2
Total FTE		**11.00**	**105.75**	**82.75**	**1.00**	**0.00**	**200.50**	

Total Current FTE	***199.50***	***Total Vacant FTE***	***1.00***	***200.50***

***** 173 Total unique contractors--some are available to work in multiple regions***

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		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	PERCENT
RGN 1-KALISPELL	ALL	977	31	101	86	339	2,751	4,285	15.49%
RGN 2-MISSOULA	ALL	836	69	247	206	264	3,204	4,826	17.45%
RGN 3-GR. FALLS	ALL	853	15	61	169	442	1,262	2,802	10.13%
RGN 4-HELENA	ALL	539	17	49	69	152	2,031	2,857	10.33%
RGN 5-BUTTE	ALL	375	4	92	53	118	988	1,630	5.89%
RGN 6-HAVRE	ALL	299	8	27	65	106	480	985	3.56%
RGN 7-LEWISTOWN	ALL	116	8	31	16	46	200	417	1.51%
RGN 8-BOZEMAN	ALL	424	5	74	66	131	1,550	2,250	8.13%
RGN 9-BILLINGS	ALL	989	28	103	116	413	4,738	6,387	23.09%
RGN 10-GLENDIVE	ALL	162	13	37	26	115	294	647	2.34%
RGN 11-MILES CITY	ALL	138	14	22	45	132	223	574	2.08%
	ALL	5,708	212	844	917	2,258	17,721	27,660	100.00%
PERCENTAGES		20.6%	0.8%	3.1%	3.3%	8.2%	64.1%	100.00%	

TOTAL CASE COUNTS
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Source. Agency Case Management System

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 1-KALISPELL									
FLATHEAD	DISTRICT	626	24	72	46	223		991	23.13%
COLUMBIA FALLS	CITY						259	259	6.04%
WHITEFISH	CITY						94	94	2.19%
FLATHEAD CTY	JUSTICE						707	707	16.50%
KALISPELL	MC						723	723	16.87%
LAKE	DISTRICT	188	2	19	12	46		267	6.23%
POLSON	CITY						64	64	1.49%
RONAN	CITY						48	48	1.12%
ST IGNATIUS	CITY						8	8	0.19%
LAKE CTY	JP						379	379	8.84%
SANDERS	DISTRICT	32	4	2	3	15		56	1.31%
HOT SPRINGS	CITY						21	21	0.49%
PLAINS	CITY						22	22	0.51%
THOMFALLS	CITY						24	24	0.56%
SANDERS CTY	JP						79	79	1.84%
LINCOLN	DISTRICT	131	1	8	25	55		220	5.13%
EUREKA	CITY						21	21	0.49%
LIBBY	CITY						116	116	2.71%
TROY	CITY						22	22	0.51%
LINCOLN CTY	JP						164	164	3.83%
REGION 1		**977**	**31**	**101**	**86**	**339**	**2,751**	**4,285**	**100.00%**

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REGION 2-MISSOULA									
MISSOULA	DISTRICT	621	66	225	167	197		1,276	26 44%
MISSOULA CTY	JP						1,121	1,121	23.23%
MISSOULA	MC						1,187	1,187	24.60%
RAVALLI	DISTRICT	203	3	21	35	43		305	6.32%
DARBY	CITY						16	16	0.33%
HAMILTON	CITY						279	279	5.78%
PINESDALE	CITY						-	-	0.00%
STEVENSVILLE	CITY						35	35	0.73%
RAVALLI CTY	JP						475	475	9.84%
MINERAL	DISTRICT	12	-	1	4	24		41	0.85%
ALBERTON	CITY						4	4	0.08%
SUPERIOR	CITY						9	9	0.19%
MINERAL CTY	JP						78	78	1.62%
REGION 2		**836**	**69**	**247**	**206**	**264**	**3,204**	**4,826**	**100.00%**

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 3-GREAT FALLS									
CASCADE	DISTRICT	704	5	50	139	392		1,290	46.04%
GREAT FALLS	CITY						-	-	0.00%
CASCADE	CITY						60	60	2.14%
BELT	CITY						-	-	0.00%
CASCADE CTY	JP						350	350	12.49%
GREAT FALLS	MC						579	579	20.66%
TOOLE	DISTRICT	43	1	5	9	11		69	2.46%
SHELBY	CITY						5	5	0.18%
TOOLE CTY	JP						42	42	1.50%
PONDERA	DISTRICT	18	1	1	6	-		26	0.93%
CONRAD	CITY						20	20	0.71%
VALIER	CITY						-	-	0.00%
PONDERA CTY	JP						25	25	0.89%
TETON	DISTRICT	44	1	3	6	27		81	2.89%
CHOTEAU	CITY						3	3	0.11%
DUTTON	CITY						-	-	0.00%
FAIRFIELD	CITY						-	-	0.00%
TETON CTY	JP						12	12	0.43%
GLACIER	DISTRICT	44	7	2	9	12		74	2.64%
CUTBANK	CITY						106	106	3.78%
GLACIER CTY	JP						60	60	2.14%
REGION 3		**853**	**15**	**61**	**169**	**442**	**1,262**	**2,802**	**100.00%**

Source: Agency Case Management System

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 4-HELENA									
LEWIS & CLARK	DISTRICT	497	12	42	52	138		741	25.94%
EAST HELENA	CITY						27	27	0.95%
HELENA	CITY						802	802	28.07%
LEWIS & CLARK CTY	JP						992	992	34.72%
BROADWATER	DISTRICT	16	1	3	12	2		34	1.19%
TOWNSEND	CITY						34	34	1.19%
BROADWATER CTY	JP						76	76	2.66%
JEFFERSON	DISTRICT	26	4	4	5	12		51	1.79%
BOULDER	CITY						16	16	0.56%
WHITEHALL	CITY						12	12	0 42%
JEFFERSON CTY	JP						72	72	2.52%
REGION 4		**539**	**17**	**49**	**69**	**152**	**2,031**	**2,857**	**100.00%**

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 5-BUTTE									
SILVER BOW	DISTRICT	175	-	63	38	58		334	20.49%
BUTTE	CITY						337	337	20.67%
SILVER BOW CTY	JP 1						127	127	7.79%
BEAVERHEAD	DISTRICT	46	1	8	5	10		70	4.29%
DILLON	CITY						69	69	4.23%
LIMA	CITY						-	-	0.00%
BEAVERHEAD CTY	JP						45	45	2.76%
MADISON	DISTRICT	22	2	5	3	2		34	2.09%
ENNIS	CITY						12	12	0.74%
MADISON CTY	JP						57	57	3.50%
POWELL	DISTRICT	77	-	4	1	3		85	5.21%
DEER LODGE	CITY						67	67	4.11%
POWELL CTY	JP						50	50	3.07%
DEER LODGE	DISTRICT	42	-	12	6	27		87	5.34%
ANACONDA	CITY						-	-	0.00%
DEER LODGE CTY	JP						202	202	12.39%
GRANITE	DISTRICT	13	1	-	-	18		32	1.96%
DRUMMOND	CITY						-	-	0.00%
PHILIPSBURG	CITY						5	5	0.31%
GRANITE CTY	JP						17	17	1.04%
REGION 5		375	4	92	53	118	988	1,630	100.00%

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REGION 6-HAVRE									
PHILLIPS	DISTRICT	13	3	2	9	-		27	4.17%
MALTA	CITY						-	-	0.00%
PHILLIPS CTY	JP						14	14	0.47%
HILL	DISTRICT	198	2	17	44	59		320	30.87%
HAVRE	CITY						170	170	25.95%
HILL CTY	JP						149	149	11.74%
CHOTEAU	DISTRICT	17	1	1	-	-		19	2.75%
FT BENTON	CITY						7	7	0.57%
BIG SANDY	CITY						-	-	0.00%
CHOTEAU CTY	JP						22	22	0.76%
VALLEY	DISTRICT	45	2	7	2	41		97	3.88%
FT PECK	CITY						-	-	0.09%
GLASGOW	CITY						29	29	2.84%
NASHUA	CITY						-	-	0.09%
VALLEY CTY	JP						26	26	2.08%
BLAINE	DISTRICT	23	-	-	10	6		39	3.60%
HARLEM	CITY						10	10	0.85%
CHINOOK	CITY						10	10	1.33%
BLAINE CTY	JP						39	39	5.87%
LIBERTY	DISTRICT	3	-	-	-	-		3	0.47%
CHESTER	CITY						-	-	0.09%
LIBERTY CTY	JP						4	4	1.52%
REGION 6		299	8	27	65	106	480	985	100.00%

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 7-LEWISTOWN									
FERGUS	DISTRICT	62	4	31	7	23		127	30.46%
LEWISTOWN	CITY						70	70	16.79%
FERGUS CTY	JP						44	44	10.55%
MUSSELLSHELL	DISTRICT	35	2	-	7	12		56	13.43%
MELSTONE	CITY						-	-	0.00%
ROUNDUP	CITY						30	30	7.19%
MUSSELLSHELL CTY	JP						18	18	4.32%
JUDITH BASIN	DISTRICT	6	-	-	1	2		9	2.16%
HOBSON	CITY						-	-	0.00%
STANFORD	CITY						-	-	0.00%
JUDITH BASIN CTY	JP						24	24	5.76%
WHEATLAND	DISTRICT	5	-	-	1	-		6	1.44%
HARLOWTON	CITY						1	1	0.24%
WHEATLAND CTY	JP						4	4	0.96%
MEAGHER	DISTRICT	6	2	-	-	1		9	2.16%
W.S.SPRING	CITY						2	2	0.48%
MEAGHER CTY	JP						4	4	0.96%
GOLDEN VALLEY	DISTRICT	1	-	-	-	8		9	2.16%
LAVINA	CITY						-	-	0.00%
RYEGATE	CITY						-	-	0.00%
GOLDEN VALLEY CTY	JP						1	1	0.24%
PETROLEUM	DISTRICT	1	-	-	-	-		1	0.24%
WINNETT	CITY						-	-	0.00%
PETROLEUM CTY	JP						2	2	0.48%
REGION 7		**116**	**8**	**31**	**16**	**46**	**200**	**417**	**100.00%**

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 8-BOZEMAN									
GALLATIN	DISTRICT	301	5	63	50	70		489	21.73%
BELGRADE	CITY						170	170	7.56%
MANHATTAN	CITY						6	6	0.27%
THREE FORKS	CITY						18	18	0.80%
W.YELLOW	CITY						33	33	1.47%
GALLATIN CTY	JP						399	399	17.73%
BOZEMAN	MC						672	672	29.87%
SWEET GRASS	DISTRICT	60	-	1	3	2		66	2.93%
BIG TIMBER	CITY						10	10	0.44%
SWEET GRASS CTY	JP						45	45	2.00%
PARK	DISTRICT	63	-	10	13	59		145	6.44%
LIVINGSTON	CITY						96	96	4.27%
PARK CTY	JP						101	101	4.49%
REGION 8		424	5	74	66	131	1,550	2,250	100.00%

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 9-BILLINGS									
YELLOWSTONE	DISTRICT	794	27	97	89	361		1,368	21.42%
LAUREL	CITY						131	131	2.05%
YELLOWSTONE CTY	JP						1,021	1,021	15.99%
BILLINGS	MC						2,913	2,913	45.61%
CARBON	DISTRICT	43	-	1	3	14		61	0.96%
BEARCREEK	CITY						-	-	0.00%
BRIDGER	CITY						5	5	0.08%
ROMBERG	CITY						7	7	0.11%
JOLIET	CITY						4	4	0.06%
RED LODGE	CITY						50	50	0.78%
CARBON CTY	JP						48	48	0.75%
BIG HORN	DISTRICT	129	1	5	12	36		183	2.87%
HARDIN	CITY						263	263	4.12%
BIG HORN CTY	JP						214	214	3.35%
STILLWATER	DISTRICT	23	-	-	12	2		37	0.58%
COLUMBUS	CITY						10	10	0.16%
STILLWATER CTY	JP						72	72	1.13%
REGION 9		**989**	**28**	**103**	**116**	**413**	**4,738**	**6,387**	**100.00%**

TOTAL CASE COUNTS
FY 2010

Source: Agency Case Management System

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2010

Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 10-GLENDIVE									
DAWSON	DISTRICT	54	3	11	11	39		118	18.24%
GLENDIVE	CITY						52	52	8.04%
DAWSON CTY	JP						64	64	9.89%
ROOSEVELT	DISTRICT	22	2	6	2	18		50	7.73%
CULBERTSON	CITY						-	-	0.00%
POPLAR	CITY						-	-	0.00%
WOLFPOINT	CITY						21	21	3.25%
ROOSEVELT CTY	JP						20	20	3.09%
RICHLAND	DISTRICT	60	1	10	7	15		93	14.37%
FAIRVIEW	CITY						42	42	6.49%
SIDNEY	CITY						32	32	4.95%
RICHLAND CTY	JP						41	41	6.34%
SHERIDAN	DISTRICT	10	1	1	1	17		30	4.64%
PLENTYWOOD	CITY						3	3	0.46%
SHERIDAN CTY	JP						4	4	0.62%
DANIELS	DISTRICT	2	2	3	2	7		16	2.47%
SCOBEY	CITY						1	1	0.15%
DANIELS CTY	JP						-	-	0.00%
McCONE	DISTRICT	5	1	2	1	-	-	9	1.39%
CIRCLE	CITY						-	-	0.00%
MCCONE CTY	JP						8	8	1.24%
PRAIRIE	DISTRICT	7	2	3	2	18		32	4.95%
TERRY	CITY						-	-	0.00%
PRAIRIE CTY	JP						5	5	0.77%
WIBAUX	DISTRICT	2	1	1	-	1		5	0.77%
WIBAUX	CITY						1	1	0.15%
WIBAUX CTY	JP						-	-	0.00%
REGION 10		**162**	**13**	**37**	**26**	**115**	**294**	**647**	**100.00%**

TOTAL CASE COUNTS
FY 2010

Source: Agency Case Management System

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2010

Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS All Limited Jurisdiction	Grand Total	PERCENT
REGION 11-MILES CITY									
POWDER RIVER	DISTRICT	7	3	-	-	-		10	1.74%
BROADUS	CITY						-	-	0.00%
POWDER RIVER CTY	JP						2	2	0.35%
CUSTER	DISTRICT	72	6	20	30	61		189	32.93%
MILES CITY	CITY						93	93	16.20%
MILES CITY	JP						-	-	0.00%
CUSTER CTY	JP						44	44	7.67%
ROSEBUD	DISTRICT	33	2	-	4	69		108	18.82%
COLSTRIP	CITY						26	26	4.53%
FORSYTH	CITY						7	7	1.22%
ROSEBUD CTY	JP						34	34	5.92%
TREASURE	DISTRICT	1	-	-	-	-		1	0.17%
HYSHAM	CITY						-	-	0.00%
TREASURE CTY	JP						3	3	0.52%
FALLON	DISTRICT	15	3	2	10	2		32	5.57%
BAKER	CITY						6	6	1.05%
FALLON CTY	JP						7	7	1.22%
CARTER	DISTRICT	5	-	-	-	-		5	0.87%
EKALAKA	CITY						-	-	0.00%
CARTER CTY	JP						-	-	0.00%
GARFIELD	DISTRICT	5	-	-	1	-		6	1.05%
JORDAN	CITY						-	-	0.00%
GARFIELD CTY	JP						1	1	0.17%
REGION 11		**138**	**14**	**22**	**45**	**132**	**223**	**574**	**100.00%**

TOTAL CASE COUNTS
FY 2010

Source: Agency Case Management System

OFFICE OF THE STATE PUBLIC DEFENDER
STATE OF MONTANA

Brian Schweitzer
Governor

Chief Public Defender
Randi Hood

CASELOAD MANAGEMENT TOOL RULES

Including a Step by Step Process

as developed and approved by
the Labor Management Committee
Revised August 13, 2010

1. Every Regional Deputy Public Defender and Managing Attorney will receive this set of rules and instructions that explains how to use the caseload management tool and a form that will be used to track caseload. Every region will follow these rules and use this form.

2. The Regional Deputy Public Defender and/or Managing Attorney will assign and track cases by attorney for the office or region. If the Regional Deputy Public Defender or Managing Attorney is absent they will appoint a backup person who will be an attorney to assign and track cases. Every region will provide the Central Office with a list of those individuals that are approved to assign and track cases including all backup personnel.

3. Cases will be assigned daily and entered into the caseload management form. This information will be reported to the Central Office within 10 calendar days after the end of each month.

4. The form will have 12 months for each attorney and a sum of the activity for the 12 month period at the bottom of each column.

5. For a new attorney any month that does not have "actual information" for case assignments will have 12.5 units in place of the non-existent actual information. Therefore each attorney will begin with 150 units or case assignments (12 months times 12.5 units = 150).

6. This tool is monitoring case intake rather than open cases, therefore, there is no incentive for a staff attorney to keep cases open.

7. One case is any number of tickets or charges an individual received in a specific incident and assigned to one jurisdiction for adjudication (i.e.

44 West Park Street Butte, Montana 59701
406 496 6080 (fax) 406 496 6098
publicdefender mt.gov

Traffic stop results in a speeding ticket, criminal distribution of dangerous drugs and possession – if litigated in the same court – all one case).

8. When a staff attorney's annual case units reaches 150 annual units, the Regional Deputy Public Defender or Managing Attorney must meet with the staff attorney to discuss the attorney's entire caseload.

9. This tool is not a performance measure but is simply used to assess whether resources are being properly distributed and help assure that the agency is not exceeding ethical caseload limits.

10. The LMC agreed to value case units as follows:

A. Felonies are split into four groups:

i. Property crimes and offenses against public administration and order = 1.00
ii. Felony DUI or dangerous drugs = 1.50
iii. Crimes against persons (except homicide) = 2.00
iv. Homicide = 5.00

Trial Time: add 1.0 to the month when a trial occurs.

Units are assigned based upon the highest crime charged, and then additional units are added to the case as follows:

v. Three or four charges, add 0.50
vi. Five or more charges, add 1.00

See Attachment A.

B. Misdemeanors are divided into two groups:

i. All city ordinance violations, disorderly conduct, obstructing, minor in possession and all traffic offenses except DUI/PerSe = 0.30
ii. DUI/PerSe and all crimes except disorderly conduct, obstructing and minor in possession = 0.70
iii. Cases comprised of five or more charges = 0.70

Trial Time: add 0.50 to the month when a trial occurs.

See Attachment A.

C. Petition to Revoke (PTR) = 0.50 units

D. Dependent and Neglect (DN) = 2.00 units (see note below)

Note: DN case weighting is based upon the cause number of the parent(s), not the number of children, and includes termination proceedings, so trial level preparation is necessary.

E. Guardianship (DG) = 0.50 units

F. Fugitive and out of county warrants = 0.25 units

G. Civil Commitments (DI) = 1.00 units

H. Juveniles
   i. Felony = 1.00 units
   ii. Misdemeanor or status offense = 0.50 units

I. Developmentally Disabled (DD) = 1.00 units

J. DUI Court (our involvement in these courts will terminate soon)
Treatment Court (??)

K. Travel Time = (applies to <u>any</u> type of case: civil, misd, felony, etc)
   i. Add <u>0.50 to the case units assigned</u> if a case is assigned outside the home region.
   ii. Add <u>2.00 to the monthly units assigned</u> for those who practice in courts located outside of the city where their office is located.
   (example, practice in Whitefish Municipal Court, and I work out of the Kalispell office, add 2.0 to my monthly total)

11. Actual monthly case units will replace the 12.5 unit place holder and become part of the calculation of total annual units.

12. This is a "rolling month" process so the most recent actual information replaces the old information and the total is recalculated.

13. Special circumstances:
   A. Warrants: If a case goes to warrant status, make no adjustments. Similarly, if a case comes back from warrant status to active, make no

adjustments unless the case has been re-assigned to another attorney. (Generally, these cases will most likely return to the attorney's caseload within the year.)

B. Conflicts: If a case is conflicted out of the office after it has been assigned, subtract the appropriate case units from the attorney to whom it was assigned. (Management retains discretion to leave the case credit on the original attorney's count if the case goes to conflict at a late stage after the attorney has worked the case for some time or if the attorney has expended significant hours.) Adjustments should be made in the month in which the transfer takes place, regardless of when the appointment was made (because spreadsheet focuses primarily on current workload it doesn't make sense to go back to previous months and make adjustments).

C. Co-counsel: If an attorney is full co-counsel, give that attorney a full credit. If the attorney is a trial-only co-counsel, give the attorney one-half of the allotted unit credit.

D. New hires: Backfill the total number of cases transferred to the attorney at 12.5 units per month beginning with the current month until all cases that have been transferred are accounted for. Backfill to fill out the year with 12.5.

E. When a case is transferred from one attorney to another the case credit moves with the case (subtract from the original attorney, add to the new attorney). Adjustment should be made in the month in which the transfer takes place, unless more than 15 units are transferred in a given month. If more than 15 units are transferred in a given month, the transfer will be spread across the previous months until the total transfer is accounted for and the other preceding months reflect up to 15 units. Example: Step One: subtract the number of cases taken from that attorney (if any are taken away, an attorney might only receive cases)

Example:
Step One: attorney gives away 20 cases

Jan	Feb	Mar	Apr	May	Jun	
8	12	10	12	10	12	
				-8	-12	(subtract 20 cases)
8	12	10	12	2	0	(total after cases subtracted)

Step Two: add the cases received (gets 30 cases)

Jan	Feb	Mar	Apr	May	Jun	
8	12	10	12	2	0	
			+2	+13	+15	(add 30 cases)
8	12	10	14	15	15	(total after cases added)

F. This tool will be reviewed periodically and may be adjusted by the Labor Management Committee.

ATTACHMENT A

Misdemeanor:

0.3 units

-ALL Traffic Offenses (Title 61) (chapters 3,5, 6, 7, 8 9, 11, 13)
Except (DUI / PerSe – 61-8-401 and 61-8-406)

-Crimes (ONLY these three) Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

-All City Ordinance Violations

0.7 units

-DUI / PerSe (Title 61) (DUI 61-8-401 and PerSe 61-8-406)

-Crimes (ALL Title 45) (chapters 2, 5, 6, 7, 8, 9, 10)
Except Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

-If there are **5 or more charges** in one case

Add 0.5 to the month when a trial occurs.
Add 0.5 to the case total for appeals from Justice/Municipal/City court upon the appeal
Add 0.5 to the units assigned if the case is outside of the assigned region).
(Example: Kidnapping charged in Kalispell, but the attorney comes from Missoula = person crime + 0.5 for travel, assign 2.5.)

****

Assign the unit based on the highest crime charged, then no units for the other charges

EXAMPLES

1- Disorderly, DUI, and open container = 0.7
(because DUI is worth the most, don't count the others)
2- No insurance, obstructing, and driving while suspended = 0.3
(that's the highest unit for any one of them)
3- No insurance, obstructing, no DL, speeding, minor in possession, which goes to trial = 1.2
(even though all are in the 0.3 category, because there are 5 or more charges assign 0.7 + 0.5 because a trial occurred)

Felony:

1.0 units

-Property Crimes (45-6-101 – 45-6-341)
-Offenses Against Public Administration (45-7-101 – 45-7-501)
-Offenses Against Public Order (45-8-103 – 45-8-408)

1.5 units

-Dangerous Drugs (45-9-101 – 45-9-132)
-Felony DUI (61-8-401, 61-8-406)

2.0 units

-Offenses Against the Person (45-5-201 – 45-5-634)
Except Homicide charges

5.0 units

-Homicide (45-5-101 – 45-5-106)

Add 1.0 to the month when a trial occurs
Add 0.5 to the units assigned if there are 3 or 4 charges in the case
Add 1.0 to the units assigned if there are 5 or more charges in the case
Add 0.5 to the units assigned if the case is outside of the assigned region).
(Example: Kidnapping charged in Kalispell, but the attorney comes from Missoula – person crime + 0.5 for travel, assign 2.5.)

Inchoate Offenses (**Solicitation, Conspiracy, and Attempt**), assign units according to the underlying crime.
Example: attempted robbery, assign points for robbery, 45-5-401 = 2.0 units

****

Assign the units based on the highest crime charged, then look at the number of charges for extra points:

EXAMPLES

1- Possession of Dangerous Drugs, Stalking = 2.0
(since stalking is worth the most, don't assign points for PODD)
2- Criminal Mischief, Arson, Burglary = 1.5
(even though all are in the 1.0 category, add .5 since there are THREE charges)
3- Attempted negligent homicide = 5.0
(even though its attempted homicide, look at underlying charge of homicide)

Office of the State Public Defender

OFFICE OF THE STATE PUBLIC DEFENDER
CASELOAD MANAGEMENT TOOL
CASE UNIT VALUES

Month/Year September-10
Region/Office
Attorney

			Value	No. of Cases	Total Value
Felonies					
	Property Crime		1	0	0
	DUI/Dang. Drug		1.5	0	0
	Crimes Against Person		2	0	0
	Homicide		5	0	0
3 or 4 Charges			0.5	0	0
5 or more charges			1	0	0
Felony Trials			1	0	0
Misdemeanor					
	Ordinance/DOC/				
	Obstructing/Traffic		0.3	0	0
	All other Misd		0.7	0	0
	Cases with five or more charges		0.7	0	0
Misd Trial			0.5	0	0
Petition to Revoke			0.5	0	0
Fugitive/OCW			0.25	0	0
Civil Cases					
	Dependent Neglect		2	0	0
	Guardianship		0.5	0	0
	Civil Commitments		1	0	0
	Developmental Disability		1	0	0
	Juvenile				
		Felony	1	0	0
		Misd	0.5	0	0
MISC					
	Case Outside Home Region		0.5	0	0
	Practice in Court outside city of office	Yes/No	2	0	0
TOTAL					0

I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT.

Attorney

Regional/Managing Attorney

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 11/1/2009 to 1o 10/31/2010

Region >>	1	1	1	1	1	1	1	1	1	1
Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
JustWare ID	201	7238	7747	77344	10530	12347	15650	17587	11746	97771
2009 November	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 December	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 February	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 April	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 September	11.00	6.75	11.25	15.20	12.00	0.00	10.50	4.00	13.30	17.20
2010 October	11.50	8.00	12.50	14.40	10.75	0.00	10.25	10.50	14.30	15.70
	147.50	139.75	148.75	154.60	147.75	125.00	145.75	139.50	152.60	157.90

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 11/1/2009 to 1o 10/31/2010

	Region >>	1	1	1	1	1	1	1	1	2	2
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	JustWare ID	72035	98497	12345	6425	77897	116504	79977	115668	20418	19035
2009	November	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009	December	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009	January	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	February	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	March	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	April	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	May	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	June	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	July	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	17.00	4.40	8.50	9.40	9.34	12.50	10.45	7.40	12.50	1.10
2010	October	6.70	6.50	2.50	7.80	4.15	13.90	11.40	11.10	10.70	9.70
		148.70	66.90	136.00	142.20	138.49	151.40	146.85	143.50	148.20	135.80

Region >>	2	2	2	2	2	2	2	2	2	2	2
Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
JustWare ID	5006	2376	6746	9475	20049	9989	24001	22082	38907	10212	19639
2009 November	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2009 December	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12 50
2010 February	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12 50
2010 April	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2010 July	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50	3.15	12.50	12.50	12.50	12.50	12.50	12.50
2010 September	12.20	10.10	11.50	13.20	0.00	14.60	25.30	16.50	17.50	11.50	16.00
2010 October	11.00	6.70	8.45	5.70	0.00	14.20	13.60	9.00	8.95	8.00	7.75
	148.20	141.80	144.95	143.90	31.50	153.80	163.90	150.50	151.45	144.50	148.75

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 11/1/2009 to 1o 10/31/2010

	Region >>	2	2	2	2	2	2	2	2	2	2	2
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	JustWare ID	12123	16611	19633	98497	65127	82591	10795	13533	14857	20675	58167
2009	November	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009	December	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009	January	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	February	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	March	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	April	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	May	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	June	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	July	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	18.40	8.10	3.80	0.07	13.80	12.90	11.90	18.20	5.60	9.70	11.20
2010	October	12.50	0.00	0.00	5.70	15.15	11.40	14.70	13.90	11.60	4.60	13.70
		155.90	133.10	128.80	62.57	153.95	149.30	151.60	157.10	142.20	139.30	149.90

Region >> Position JustWare ID	3 Attorney 16253	3 Attorney 6163	3 Attorney 19893	3 Attorney 3460	3 Attorney 28675	3 Attorney 12133	3 Attorney 2794	3 Attorney 80137	3 Attorney 14348	3 Attorney 102666	3 Attorney 39086
2009 November	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 December	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 February	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 April	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12 50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12 50	12.50	12.50
2010 September	16.00	15.00	10.30	10.50	12.50	11.00	2.50	7.00	0.50	11.50	6 40
2010 October	14.50	14.50	6.00	7.50	13.00	12.00	9.50	17.40	0.25	23 40	3.40
	155.50	154.50	141.30	143.00	150.50	148.00	137.00	149.40	125.75	159.90	134.80

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 11/1/2009 to 1o 10/31/2010

Region >>	4	4	4	4	4	4	4	4	4	4	5
Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
JustWare ID	59891	63245	28144	26947	15628	95917	98470	101077	101076	83447	33423
2009 November	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2009 December	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 February	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 April	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 July	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50
2010 September	9.50	10.70	13 20	3.25	6.80	18.10	18.70	33.40	35.90	4.50	1.50
2010 October	15.40	0.00	5.90	9.20	7.50	14.40	22.50	24.40	35.30	14.50	0.00
	149.90	135.70	144.10	137.45	76.80	157.50	166.20	182.80	196.20	144.00	126.50

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 11/1/2009 to 1o 10/31/2010

Region >>	5	5	5	5	5	5	5	5	6	6	7
Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
JustWare ID	30333	24134	87995	3651	24117	24135	96968	106250	28676	Vacant	5211
2009 November	12 50	12.50	12.50	12.50	12 50	12.50	12.50	12.50	12.50	12.50	12 50
2009 December	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 February	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 April	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12 50	12.50
2010 July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 September	12.90	15.50	15.60	14.70	13.80	12.05	15.60	20.90	12.50	12.50	7.10
2010 October	12.10	16.80	11.90	8.60	9.15	16.50	12.80	11.60	12.50	12.50	8.20
	150.00	157.30	152.50	148.30	147.95	153.55	153.40	157.50	150.00	150.00	140.30

Region >>	8	8	8	8	8	8	8	8	8	8	8
Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
JustWare ID	2566	39619	81213	38962	57485	68437	60630	75544	16168	98303	98467
2009 November	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 December	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 February	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 April	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 September	11.50	9.45	11.80	12.50	14.60	19.00	8.50	13.30	4.50	11.10	11.40
2010 October	9.40	9.50	8.60	10.75	14.75	11.70	9.20	10.60	8.50	9.50	9.90
	145.90	143.95	145.40	148.25	154.35	155.70	142.70	148.90	138.00	145.60	146.30

Region >>	9	9	9	9	9	9	9	9	9	9	9
Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
JustWare ID	39077	39078	51608	76823	78570	98463	43105	96287	116597	106447	116585
2009 November	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 December	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 February	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 April	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 September	15.50	1.50	4.50	25.00	17.00	13.00	4.00	17.90	12.50	12.50	12.50
2010 October	12.50	5.50	3.00	12.50	22.25	16.50	5.00	17.40	17.00	19.50	20.60
	153.00	132.00	132.50	162.50	164.25	154.50	134.00	160.30	154.50	157.00	158.10

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 11/1/2009 to 1o 10/31/2010

	Region >>	9	9	9	9	9	9	9	10	10	10	11
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	JustWare ID	39090	113312	39074	100099	100098	51592	43104	62657	108480	21647	3022
2009	November	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009	December	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2009	January	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	February	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	March	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	April	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	May	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	June	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	July	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	7.81	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	12.00	20.90	7.00	23.70	28.60	17.60	13.80	14.70	13.20	16.50	15.70
2010	October	0.00	10.80	6.00	12.80	5.50	18.00	10.10	12.00	13.20	11.10	12.80
		90.10	156.70	138.00	161.50	159.10	160.60	148.90	151.70	151.40	152.60	153.50

Region >>	11	MCU	MCU	MCU
Position	Attorney	Attorney	Attorney	Attorney
JustWare ID	87795	27742	101	110253
2009 November	12.50	12.50	12.50	12.50
2009 December	12.50	12.50	12.50	12.50
2009 January	12.50	12.50	12.50	12.50
2010 February	12.50	12.50	12.50	12.50
2010 March	12.50	12.50	12.50	12.50
2010 April	12.50	12.50	12.50	12.50
2010 May	12.50	12.50	12.50	12.50
2010 June	12.50	12.50	12.50	12.50
2010 July	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50
2010 September	34.60	(4.50)	0.00	7.50
2010 October	14.90	5.00	1.00	12.00
	174.50	125.50	126.00	144.50

Office of the State Public Defender

FY 10 TRAINING PROGRAMS

As of June 30, 2010

Date Of Training	Description of Training	Internal Personnel		External Personnel		Totals
		Attorney	Non-Attorney	Attorney	Non-Attorney	
July 6-8, 2009	OPD Investigator Conference	4	18	0	0	22
August 5-7, 2009	NACDL State Legislative Network Conference (Boston, MA)	1				1
August 10 - 13, 2009	Boot Camp Trial Skills Workshop †	26		9		35
September 11, 2009	Statewide DN Practice Update	9		15		24
September 25, 2009	Understanding the Lawyer Assistance Program	44		8		52
October 14-16, 2009	OPD Annual Training Conference and Staff Meeting	93	23	39	11	166
October 14-16, 2009	NJDC Leadership Summit (Denver, CO) †	1				1
November 20, 2009	OPD Juvenile Defender Update 2 †	17		7		24
December 3-4, 2009	OPD Leadership Workshop †	23	1			24
January 15, 2010	Pleadings, Files, and Forms †	21	32	11		64
January 22, 2010	DN Defender Update 2	14		15		29
January 29, 2010	Psychiatric Medications †	38		13		51
February 19, 2010	Revisiting Miranda †	31	8	17		56
February 26, 2010	OPD Juvenile Defender Update 3 †	20		8		28
March 10-12, 2010	Chico Hot Springs Joint Criminal Defense Conference †					0
March 19, 2010	DI Defender Update	20		8		28
March 26, 2010	Domestic Violence Education -- Part I (The Abuser) †	35	10	12		57
March 30, 2010	DI Training -- Billings OPD attorneys	10	4		6	20
April 16, 2010	DN Defender Update 3	20		8		28
April 23, 2010	Domestic Violence Education -- Part 2 (The Victim) †	32	1	7		40
April 27, 2010	Youth Court Defender Conference (Pine Hills) †	14				14
May 11, 2010	Forensic Science Training (Crime Lab) †	21				21
May 14, 2010	OPD Juvenile Defender Update 3 †	20		8		28
June 16-17, 2010	Mental Health Law Conference	21	3	11	7	42
June 22-23, 2010	Support Staff Training Conference	3	67		2	72
	Totals	**538**	**167**	**196**	**26**	**927**

† Training topics presented to train attorneys for criminal defense or procedure.

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2010

Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	LIMITED COURTS Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
RGN 1-KALISPELL	ALL	$ 1,401,709	$ 22,897	$ 26,117	$ 94,243	$ 413,266	$ 970,053	$ 2,928,284	15.08%
RGN 2-MISSOULA	ALL	1,292,243	43,377	99,315	148,128	660,625	1,280,273	3,523,962	18.15%
RGN 3-GR. FALLS	ALL	1,286,340	17,946	44,024	153,474	351,380	514,629	2,367,794	12.19%
RGN 4-HELENA	ALL	648,300	10,068	11,427	36,921	140,703	429,423	1,276,842	6.58%
RGN 5-BUTTE	ALL	652,450	4,520	45,320	64,670	191,403	466,136	1,424,498	7.34%
RGN 6-HAVRE	ALL	426,311	5,110	6,520	46,260	79,639	172,073	735,913	3.79%
RGN 7-LEWISTOWN	ALL	180,888	4,615	25,304	18,244	60,816	94,989	384,855	1.98%
RGN 8-BOZEMAN	ALL	748,363	12,317	27,057	89,763	241,337	755,753	1,874,590	9.65%
RGN 9-BILLINGS	ALL	1,777,022	16,914	79,885	85,933	487,606	1,270,384	3,717,744	19.15%
RGN 10-GLENDIVE	ALL	289,100	1,186	11,262	20,003	79,321	160,716	561,588	2.89%
RGN 11-MILES CITY	ALL	249,287	5,079	11,203	44,113	179,537	131,086	620,305	3.19%
	ALL	$ 8,952,012	$ 144,029	$ 387,434	$ 801,751	$ 2,885,633	$ 6,245,515	$ 19,416,374	100.00%

Source. Agency audited financial statement and case management system.

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2010

		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 1-KALISPELL									
FLATHEAD	DISTRICT	$ 884,503	$ 12,372	$ 18,162	$ 54,005	$ 229,208		$ 1,198,249	40.92%
COLUMBIA FALLS	CITY						41,940	41,940	1.43%
WHITEFISH	CITY						44,289	44,289	1.51%
FLATHEAD CTY	JUSTICE						231,254	231,254	7.90%
KALISPELL	MC						194,383	194,383	6.64%
LAKE	DISTRICT	299,748	2,965	4,349	12,703	121,381		441,146	15.07%
POLSON	CITY						30,663	30,663	1.05%
RONAN	CITY						10,644	10,644	0.36%
ST IGNATIUS	CITY						5,471	5,471	0.19%
LAKE CTY	JP						211,043	211,043	7.21%
SANDERS	DISTRICT	72,513	6,836		18,755	33,804		131,908	4.50%
HOT SPRINGS	CITY						7,775	7,775	0.27%
PLAINS	CITY						7,768	7,768	0.27%
THOMFALLS	CITY						16,265	16,265	0.56%
SANDERS CTY	JP						36,130	36,130	1.23%
LINCOLN	DISTRICT	144,946	723	3,606	8,780	28,873		186,927	6.38%
EUREKA	CITY						4,651	4,651	0.16%
LIBBY	CITY						43,458	43,458	1.48%
TROY	CITY						3,433	3,433	0.12%
LINCOLN CTY	JP						80,886	80,886	2.76%
REGION 1		**$ 1,401,709**	**$ 22,897**	**$ 26,117**	**$ 94,243**	**$ 413,266**	**$ 970,053**	**$ 2,928,284**	**100.00%**

Source: Agency audited financial statement and case management system.

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2010

		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 2-MISSOULA									
MISSOULA	DISTRICT	$ 926,705	$ 39,192	$ 82,525	$ 109,220	$ 534,513		$ 1,692,156	48.02%
MISSOULA CTY	JP						388,615	386,615	10.97%
MISSOULA	MC						454,104	454,104	12.89%
RAVALLI	DISTRICT	338,341	4,185	16,790	28,216	98,624		486,156	13.80%
DARBY	CITY						7,366	7,366	0.21%
HAMILTON	CITY						124,480	124,480	3.53%
PINESDALE	CITY								0.00%
STEVENSVILLE	CITY						17,488	17,488	0.50%
RAVALLI CTY	JP						209,498	209,498	5.94%
MINERAL	DISTRICT	27,197			10,693	27,488		65,377	1.86%
ALBERTON	CITY						4,868	4,868	0.14%
SUPERIOR	CITY						10,152	10,152	0.29%
MINERAL CTY	JP						65,701	65,701	1.86%
REGION 2		$ 1,292,243	$ 43,377	$ 99,315	$ 148,128	$ 660,625	$ 1,280,273	$ 3,523,962	100.00%

Source: Agency audited financial statement and case management system.

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2010

		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 3-GREAT FALLS									
CASCADE	DISTRICT	$ 1,007,764	$ 12,633	$ 27,001	$ 112,062	$ 308,595		$ 1,468,056	62.00%
GREAT FALLS	CITY						26,034	26,034	1.10%
CASCADE	CITY						11,952	11,952	0.50%
BELT	CITY								0.00%
CASCADE CTY	JP						93,760	93,760	3.96%
GREAT FALLS	MC						192,148	192,148	8.12%
TOOLE	DISTRICT	93,442	840	1,527	8,254	9,303		113,366	4.79%
SHELBY	CITY						5,325	5,325	0.22%
TOOLE CTY	JP						29,005	29,005	1.22%
PONDERA	DISTRICT	32,985	1,167	12,503	5,608	880		53,143	2.24%
CONRAD	CITY						26,163	26,163	1.10%
VALIER	CITY								0.00%
PONDERA CTY	JP						19,469	19,469	0.82%
TETON	DISTRICT	76,274	623	1,999	19,990	18,514	1,311	118,710	5.01%
CHOTEAU	CITY						2,351	2,351	0.10%
DUTTON	CITY								0.00%
FAIRFIELD	CITY								0.00%
TETON CTY	JP						18,936	18,936	0.80%
GLACIER	DISTRICT	75,875	2,684	994	7,561	14,089		101,201	4.27%
CUTBANK	CITY						58,937	58,937	2.49%
GLACIER CTY	JP						29,237	29,237	1.23%
REGION 3		**$ 1,286,340**	**$ 17,946**	**$ 44,024**	**$ 153,474**	**$ 351,380**	**$ 514,629**	**$ 2,367,794**	**100.00%**

Source Agency audited financial statement and case management system.

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2010

		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 4-HELENA									
LEWIS & CLARK	DISTRICT	$ 558,344	$ 7,695	$ 5,595	$ 29,409	$ 118,266		$ 719,309	56.34%
EAST HELENA	CITY						7,935	7,935	0.62%
HELENA	CITY						134,310	134,310	10.52%
LEWIS & CLARK CTY	JP						224,011	224,011	17.54%
BROADWATER	DISTRICT	22,349	1,097	-	5,333	752		29,530	2.31%
TOWNSEND	CITY						9,280	9,280	0 73%
BROADWATER CTY	JP						18,889	18,889	1.48%
JEFFERSON	DISTRICT	67,607	1,277	5,832	2,179	21,685		98,580	7.72%
BOULDER	CITY						5,835	5,835	0.46%
WHITEHALL	CITY						3,286	3,286	0 26%
JEFFERSON CTY	JP						25,876	25,876	2.03%
REGION 4		$ 648,300	$ 10,068	$ 11,427	$ 36,921	$ 140,703	$ 429,423	$ 1,276,842	100.00%

Source: Agency audited financial statement and case management system.

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		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 5-BUTTE									
SILVER BOW	DISTRICT	$ 288,196	$ 2,943	$ 31,429	$ 34,370	$ 97,342		$ 454,280	31.89%
BUTTE	CITY						129,234	129,234	9.07%
SILVER BOW CTY	JP 1						46,340	46,340	3.25%
BEAVERHEAD	DISTRICT	79,903	272	2,274	6,805	21,351		110,604	7.76%
DILLON	CITY						51,793	51,793	3.64%
LIMA	CITY								0.00%
BEAVERHEAD CTY	JP						46,328	46,328	3.25%
MADISON	DISTRICT	86,095	942	1,848	10,326	3,969		103,179	7.24%
ENNIS	CITY						7,520	7,520	0.53%
MADISON CTY	JP						62,506	62,506	4.39%
POWELL	DISTRICT	108,265	363	876	4,161	6,526		120,191	8.44%
DEER LODGE	CITY						21,042	21,042	1.48%
POWELL CTY	JP						19,183	19,183	1.35%
DEER LODGE	DISTRICT	68,888	-	8,508	9,009	57,100		143,505	10.07%
ANACONDA	CITY								0.00%
DEER LODGE CTY	JP						71,351	71,351	5.01%
GRANITE	DISTRICT	21,103	-	384	-	5,115		26,603	1.87%
DRUMMOND	CITY								0.00%
PHILIPSBURG	CITY						2,176	2,176	0.15%
GRANITE CTY	JP						8,662	8,662	0.61%
REGION 5		**$ 652,450**	**$ 4,520**	**$ 45,320**	**$ 64,670**	**$ 191,403**	**$ 466,136**	**$ 1,424,498**	**100.00%**

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 6-HAVRE									
PHILLIPS	DISTRICT	$ 14,852	$ 4,637	$ 498	$ 5,943	$ 10,405		$ 36,335	4 94%
MALTA	CITY						464	464	0 06%
PHILLIPS CTY	JP						2,882	2,882	0.39%
HILL	DISTRICT	266,446	274	4,265	27,646	31,345		329,977	44 84%
HAVRE	CITY						55,913	55,913	7.60%
HILL CTY	JP						48,691	48,691	6 62%
CHOTEAU	DISTRICT	26,155		104		66		26,325	3.58%
FT BENTON	CITY						4,313	4,313	0.59%
BIG SANDY	CITY								0 00%
CHOTEAU CTY	JP						10,240	10,240	1.39%
VALLEY	DISTRICT	61,682	199	1,320	6,074	35,756		105,032	14 27%
FT PECK	CITY								0 00%
GLASGOW	CITY						8,398	8,398	1 14%
NASHUA	CITY								0 00%
VALLEY CTY	JP						8,195	8,195	1 11%
BLAINE	DISTRICT	49,004			6,597	2,066		57,667	7 84%
HARLEM	CITY						2,682	2,682	0 36%
CHINOOK	CITY						2,690	2,690	0 37%
BLAINE CTY	JP						26,249	26,249	3.57%
LIBERTY	DISTRICT	8,171		332				8,504	1.16%
CHESTER	CITY								0.00%
LIBERTY CTY	JP						1,355	1,355	0.18%
REGION 6		$ 426,311	$ 5,110	$ 6,520	$ 46,260	$ 79,639	$ 172,073	$ 735,913	100.00%

Source: Agency audited financial statement and case management system

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		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 7-LEWISTOWN									
FERGUS	DISTRICT	$ 58,496	$ 765	$ 25,304	$ 8,292	$ 27,337		$ 120,194	31.23%
LEWISTOWN	CITY						33,130	33,130	8.61%
FERGUS CTY	JP						12,921	12,921	3.36%
MUSSELLSHELL	DISTRICT	97,587	1,063		8,878	27,080		134,607	34.98%
MELSTONE	CITY								0.00%
ROUNDUP	CITY						17,100	17,100	4.44%
MUSSELLSHELL CTY	JP						9,866	9,866	2.56%
JUDITH BASIN	DISTRICT	4,741				2,399		7,140	1.86%
HOBSON	CITY								0.00%
STANFORD	CITY								0.00%
JUDITH BASIN CTY	JP						12,406	12,406	3.22%
WHEATLAND	DISTRICT	8,542			1,074	1,224		10,840	2.82%
HARLOWTON	CITY						1,250	1,250	0.32%
WHEATLAND CTY	JP						4,474	4,474	1.16%
MEAGHER	DISTRICT	4,223	2,787			1,233		8,242	2.14%
W.S.SPRING	CITY						1,419	1,419	0.37%
MEAGHER CTY	JP						244	244	0.06%
GOLDEN VALLEY	DISTRICT	1,813				1,544		3,357	0.87%
LAVINA	CITY								0.00%
RYEGATE	CITY								0.00%
GOLDEN VALLEY CTY	JP						2,180	2,180	0.57%
PETROLEUM	DISTRICT	5,486						5,486	1.43%
WINNETT	CITY								0.00%
PETROLEUM CTY	JP								0.00%
REGION 7		**$ 180,888**	**$ 4,615**	**$ 25,304**	**$ 18,244**	**$ 60,816**	**$ 94,989**	**$ 384,855**	**100.00%**

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Court	Type	DISTRICT COURT Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	LIMITED COURTS Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 8-BOZEMAN									
GALLATIN	DISTRICT	$ 614,869	$ 11,864	$ 25,854	$ 79,516	$ 197,460		$ 929,563	49.59%
BELGRADE	CITY						95,338	95,338	5.09%
MANHATTAN	CITY						1,736	1,736	0.09%
THREE FORKS	CITY						9,650	9,650	0.51%
W YELLOW	CITY						25,428	25,428	1.36%
GALLATIN CTY	JP						122,074	122,074	6.51%
BOZEMAN	MC						367,598	367,598	19.61%
SWEET GRASS	DISTRICT	13,986		49	2,858	1,445		18,338	0.98%
BIG TIMBER	CITY						3,900	3,900	0.21%
SWEET GRASS CTY	JP						16,803	16,803	0.90%
PARK	DISTRICT	119,508	453	1,155	7,388	42,432		170,936	9.12%
LIVINGSTON	CITY						52,288	52,288	2.79%
PARK CTY	JP						60,937	60,937	3.25%
REGION 8		**$ 748,363**	**$ 12,317**	**$ 27,057**	**$ 89,763**	**$ 241,337**	**$ 755,753**	**$ 1,874,590**	**100.00%**

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Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 9-BILLINGS									
YELLOWSTONE	DISTRICT	$ 1,295,715	$ 16,520	$ 75,445	$ 66,645	$ 376,336		$ 1,830,661	49.24%
LAUREL	CITY						73,532	73,532	1.98%
YELLOWSTONE CTY	JP						292,203	292,203	7.86%
BILLINGS	MC						555,126	555,126	14 93%
CARBON	DISTRICT	272,970.20	304 13	1,983.55	5,835 57	33,359.65		314,453	8.46%
BEARCREEK	CITY								0.00%
BRIDGER	CITY						4,005	4,005	0.11%
FROMBERG	CITY						7,674	7,674	0.21%
JOLIET	CITY						3,644	3,644	0.10%
RED LODGE	CITY						68,291	68,291	1.84%
CARBON CTY	JP						46,883	46,883	1.26%
BIG HORN	DISTRICT	120,150.26	90.29	2,456.43	9,205.74	69,135.99		201,039	5.41%
HARDIN	CITY						108,034	108,034	2 91%
BIG HORN CTY	JP						69,592	69,592	1.87%
STILLWATER	DISTRICT	88,186.27			4,246.53	8,774.73		101,208	2.72%
COLUMBUS	CITY						4,574	4,574	0.12%
STILLWATER CTY	JP						36,826	36,826	0.99%
REGION 9		$ 1,777,022	$ 16,914	$ 79,885	$ 85,933	$ 487,606	$ 1,270,384	$ 3,717,744	100.00%

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Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 10-GLENDIVE									
DAWSON	DISTRICT	$ 85,490	$ 386	$ 2,730	$ 14,526	$ 17,583		$ 120,714	21 50%
GLENDIVE	CITY						28,793	28,793	5 13%
DAWSON CTY	JP						27,729	27,729	4.94%
ROOSEVELT	DISTRICT	51,681	188	2,151	213	39,306		93,539	16.66%
CULBERTSON	CITY								0.00%
POPLAR	CITY						885	885	0 16%
WOLFPOINT	CITY						5,408	5,408	0 96%
ROOSEVELT CTY	JP						16,246	16,246	2.89%
RICHLAND	DISTRICT	84,341	217	3,876	3,757	7,712		99,903	17 79%
FAIRVIEW	CITY						16,587	16,587	2 95%
SIDNEY	CITY						11,561	11,561	2.06%
RICHLAND CTY	JP						40,727	40,727	7 25%
SHERIDAN	DISTRICT	18,080	80	92		3,019		21,271	3.79%
PLENTYWOOD	CITY						317	317	0.06%
SHERIDAN CTY	JP						6,977	6,977	1.24%
DANIELS	DISTRICT	13,125	92	984		3,204		17,404	3 10%
SCOBEY	CITY								0 00%
DANIELS CTY	JP						414	414	0 07%
McCONE	DISTRICT	14,411		770	882			16,063	2 86%
CIRCLE	CITY								0 00%
MCCONE CTY	JP						3,385	3,385	0.60%
PRAIRIE	DISTRICT	18,080	131	529	625	8,390		27,755	4 94%
TERRY	CITY								0.00%
PRAIRIE CTY	JP						1,687	1,687	0.30%
WIBAUX	DISTRICT	3,892	92	131		107		4,222	0.75%
WIBAUX	CITY								0.00%
WIBAUX CTY	JP								0.00%
REGION 10		**$ 289,100**	**$ 1,186**	**$ 11,262**	**$ 20,003**	**$ 79,321**	**$ 160,716**	**$ 561,588**	**100.00%**

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Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
REGION 11-MILES CITY									
POWDER RIVER	DISTRICT	$ 5,916				$ 229		$ 6,145	0.99%
BROADUS	CITY								0.00%
POWDER RIVER CTY	JP						2,571	2,571	0.41%
CUSTER	DISTRICT	126,964	4,762	11,108	31,764	100,557		275,155	44.36%
MILES CITY	CITY						46,362	46,362	7.47%
MILES CITY	JP								0.00%
CUSTER CTY	JP						18,021	18,021	2.91%
ROSEBUD	DISTRICT	81,227	317		9,500	61,841		152,885	24.65%
COLSTRIP	CITY						20,366	20,366	3.28%
FORSYTH	CITY						2,360	2,360	0.38%
ROSEBUD CTY	JP						22,219	22,219	3.58%
TREASURE	DISTRICT	13,900			24	4,477		18,401	2.97%
HYSHAM	CITY						1,405	1,405	0.23%
TREASURE CTY	JP						2,717	2,717	0.44%
FALLON	DISTRICT	17,871		95	2,180	10,003		30,148	4.86%
BAKER	CITY						4,465	4,465	0.72%
FALLON CTY	JP						10,021	10,021	1.62%
CARTER	DISTRICT	1,442				2,430		3,872	0.62%
EKALAKA	CITY								0.00%
CARTER CTY	JP						341	341	0.06%
GARFIELD	DISTRICT	1,967			645			2,612	0.42%
JORDAN	CITY								0.00%
GARFIELD CTY	JP						238	238	0.04%
REGION 11		**$ 249,287**	**$ 5,079**	**$ 11,203**	**$ 44,113**	**$ 179,537**	**$ 131,086**	**$ 620,305**	**100.00%**

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